



Republic of the Philippines

## DEPARTMENT of AGRARIAN REFORM

ELLIPTICAL ROAD, DILIMAN, QUEZON CITY TELS. 997-031 TO 39

MEMORANDUM CIRCULAR NO. **32**  
Series of 1997

TO : All Concerned DAR Officials and Employees

SUBJECT : LIFTING THE SUSPENSION OF THE IMPLEMENTATION OF R.A. No. 7881 AND ITS IMPLEMENTING RULE, ADMINISTRATIVE ORDER NO. 3, SERIES OF 1995

WHEREAS, Republic Act No. 7881, amending certain provisions of R.A. No. 6657, took effect on 12 March 1995, exempting fishponds and prawn farms from the coverage of the CARL;

WHEREAS, the SENTRO PARA SA TUNAY NA REFORMANG AGRARYO (SENTRA) et. al. has filed before the Supreme Court a petition assailing the constitutionality of Sections 1, 2 and 3 of Republic Act No. 7881, which amended Republic Act No. 6657, and DAR Administrative Order No. 3, Series of 1995;

WHEREAS, on 17 October 1995, the SENTRO PARA SA TUNAY NA REFORMANG AGRARYO (SENTRA) FOUNDATION, et. al. concomitantly filed a Petition for Certiorari and Prohibition with Application for Temporary Restraining Order and/or Preliminary Injunction with the Supreme Court against the Secretary of Agrarian Reform to enjoin and/or restrain the Department of Agrarian Reform from enforcing Sections 1, 2 and 3 of R.A. No. 7881 and its implementing rule, Administrative Order, No. 3, Series of 1995, insofar as they exempt fishponds and prawn farms from the coverage of CARL;

WHEREAS, on 13 November 1995, the Supreme Court (First Division) issued a Resolution granting the prayer of Petitioners, SENTRA, et. al., for the issuance of a Temporary Restraining Order (TRO) and enjoining the DAR from enforcing the challenged provisions of R.A. No. 7881 and DAR Administrative Order No. 3, Series of 1995;

WHEREAS, pursuant to the aforesaid Supreme Court Resolution dated 13 November 1995, DAR issued Memorandum Circular No. 27, Series of 1995 suspending the implementation of R.A. No. 7881 and its implementing rule, DAR A.O. No. 3, Series of 1993;

WHEREAS, on 31 July 1996, the Supreme Court handed down a Resolution referring the case to the Court of Appeals for proper determination and disposition thereof pursuant to Revised Administrative Circular No. 1-95 dated May 16, 1995;

WHEREAS, on 7 January 1997, the Court of Appeals promulgated its Decision denying due course and dismissing the Petition of SENTRA; said Court likewise denied SENTRA's Motion for Reconsideration in its Resolution dated 9 July 1997;

102807-17



"Tulong-tulong sa pagsulong"



NOW THEREFORE, on the basis of the Court of Appeals' Entry of Judgment dated 23 September 1997 certifying that its Decision dated 7 January 1997 has become final and executory on 6 August 1997, this ORDER is hereby issued:

1. LIFTING the suspension of the implementation of R.A. No. 7881 and DAR Administrative Order No. 3, Series of 1995;
2. REVOKING DAR Memorandum Circular No. 27, Series of 1995; and
3. DIRECTING the resumption of the processing of applications for exemption/exclusion of fishponds and prawn farms pursuant to R.A. No. 7881 and A.O. No. 3, Series of 1995.

This Circular takes effect immediately and supercedes previous issuances inconsistent thereto.

  
ERNESTO D. GARILAO  
Secretary

REPUBLIC OF THE PHILIPPINES  
COURT OF APPEALS  
MANILA

RA No 7881  
MC No 27, p 1981

I, TESSIE L. GATMAITAN, Clerk of Court of the Court of Appeals, do hereby certify that I have examined the herein document, to wit:

A certified xerox copy of the Decision of the Court of Appeals in case CA-G.R. SP No. 41800, Sentro Para SA Tunay Na Repormang Agraryo (SENTRA), et al. vs. Hon. Secretary of Agrarian Reform, promulgated on January 7, 1997, and consisting of nine (9) pages only.

NOTE: This certification is not valid without the signatures of the proofreaders, verifier and the certifying officer as well as the seal of the Court on each and every page of this document.

That the same has been compared with the Original on file in this Office, and that the same is a true and correct copy thereof.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the seal of this Court, this 6th day of October, 1997.

TESSIE L. GATMAITAN  
Clerk of Court

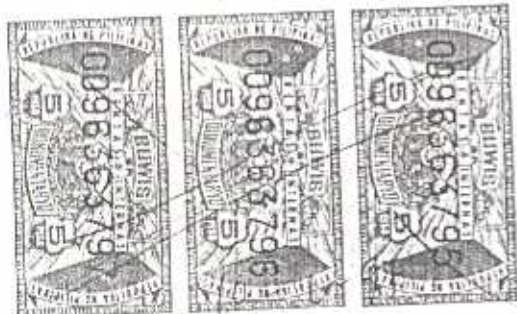
BY: *[Signature]* GEMMA LETICIA F. TABLATE  
Reporter

Verified with the original in the custody of the Reporter's Division by: *[Signature]* 10/6/97

Proofread BY:

*[Signature]*  
JUANITO L. ATIBOLA

*[Signature]*  
ARLETTE FATIMA G. IBALIZ



PAID: P 12.40 P 33.40

O.R. NOS: 6774465 & 7620221

DATE: 10/6/97

Issued upon the request of:

ATTY. GLENNE B. PALUBON

Punzalan & Asso. Law Office

2-F, Hiyos Bldg., Malolos Bulacan

REPUBLIC OF THE PHILIPPINES  
**COURT OF APPEALS**  
MANILA

SENTRO PARA SA TUNAY NA REFORMANG  
AGRARYO FOUNDATION, ET AL.,  
Plaintiff Petitioners,

Versus

HON. SECRETARY OF AGRARIAN REFORM,  
~~Respondent~~ Respondent.

CA G. R. No. 41800 - SP

DAR ADMINISTRATIVE ORDER  
No. 03, SERIES OF 1995

of DAR, DILIMAN, Q. C.

**ENTRY OF JUDGMENT**

I, FESSIE L. GATMAITAN, Clerk of Court of the Court of Appeals of the Philippines  
do hereby certify that on January 07, 1997  
a decision rendered in the above-entitled case  
was filed in this office, the dispositive part of which reads as follows:

"WHEREFORE, premises considered, the petition is hereby  
DENIED DUE COURSE and the same DISMISSED.

"SO ORDERED."

and that the same has on August 06, 1997  
become final and executory.

ENTERED this 23rd day of September, 19 97 in the BOOK OF

ENTRIES OF JUDGMENTS  
Copy furnished:

Atty. Ernesto P. [unclear] - ord.  
54 San Isidro St., Barrio Kapitolyo,  
1600 Pasig City

Public Interest Law Center - ord.  
4th Floor, Kaija Building,  
Makati Ave., cor. Valdez St.,  
1200 Makati City

Atty. Sherdale M. Valdez - ord.

FESSIE L. GATMAITAN  
Clerk of Court

By:   
ATTY. DIONISIO C. JIMENEZ  
Division Clerk of Court

Atty. Delkin B. Samson - ord.  
Rm. 101, 1st Floor, DAR Main Bld  
Elliptical Road, Diliman, Q. C.



Republic of the Philippines  
Supreme Court  
Manila

RUSSELL

FIRST DIVISION



Gentlemen:

41800 J. [Signature]

Quoted hereunder, for your information, is a resolution of the First Division of this Court dated. NOV 13 1995 [Signature]

"G.R. No. 122170 (Sentro Para sa Tunay na Reformang Agraryo (SENTRA) Foundation, et al. vs. Secretary of Agrarian Reform). - Considering the special civil action for certiorari and prohibition with prayer for preliminary injunction and/or issuance of a temporary restraining order, the Court, without giving due course to the petition, Resolved to: (1) require the respondent to COMMENT thereon, (not to file a motion to dismiss), within ten (10) days from notice; and (2) ISSUE the TEMPORARY RESTRAINING ORDER prayed for effective as of this date and to continue to be so effective during the entire period that the case is pending or until further orders.

The erratum of petitioners is further NOTED. "

Very truly yours,

[Signature]  
VIRGINIA ANCHETA-SORIANO  
Clerk of Court  
First Division

NOV 13 1995

PUBLIC INTEREST LAW CENTER  
Counsel for Petitioners  
4th Floor, Kaija Bldg.,  
Makati Ave., Makati City

Hon. Secretary of Agrarian  
Reform  
Elliptical Road, Quezon  
City

FREE LEGAL ASSISTANCE GROUP  
Counsel for Petitioners  
Room 402, Cabrera Bldg.,  
Timog, Quezon City

The Solicitor General (x)  
Makati City  
(WITH COPY OF PETITION)

D.A.R.  
LEGAL AFFAIRS OFFICE  
RECEIVED

The erratum of petitioners is further  
ROTED.

HON, THEREFORE, you (respondent), your officers,  
agents, representatives, and/or persons acting upon  
your orders or in your place or stead, are hereby  
ENJOINED from enforcing the challenged provisions of  
Republic Act No. 7881 and DAR Administrative Order No.  
3, Series of 1995.

GIVEN by the Hon. TEODORO R. PADILLA, Chairman of  
the First Division, Supreme Court of the Philippines,  
this 13th day of November, nineteen hundred and ninety-  
five.

  
VIRGINIA ANCHETA-SORIAHO  
Clerk of Court  
First Division

NOV 13 1995

Copy furnished:

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*MS*

NOV 13 1995

Republic of the Philippines  
DEPARTMENT of AGRARIAN REFORMS

MEMORANDUM CIRCULAR No. 27  
Series of 1995



TO : All concerned DAR Officials and Employees

SUBJECT : Suspension of the implementation of RA 7881 and its implementing rule, Administrative Order Series No. 3, Series of 1995, per Supreme Court Resolution dated November 13, 1995.

- x
1. On October 17, 1995, the Sentro Para sa Tunay na Repormang Agraryo (SENTRA) Foundation and several other concerned groups and individual taxpayers filed a Petition for Certiorari and Prohibition with Application for Temporary Restraining Order and/or Preliminary Injunction with the Supreme Court against the Secretary of Agrarian Reform to enjoin and/or restrain the Department of Agrarian Reform from enforcing Sections 1, 2, and 3 of RA 7881 which took effect on March 12, 1995, and its implementing rule, Administrative Order No. 3, Series of 1995, the effectivity date of which was March 12, 1995, insofar as the they exempt fishponds and prawn farms from the coverage of the CARL.

On November 13, 1995, the Supreme Court (First Division) issued a RESOLUTION granting the prayer of Petitioners SENTRA et al. for a TEMPORARY RESTRAINING ORDER (TRO). The pertinent portions of the resolution are quoted verbatim as follows:

"G.R. No. 122170 (Sentro Para Sa Tunay na Repormang Agraryo (SENTRA) Foundation, et al. vs. Secretary of Agrarian Reform). Considering the special civil action for certiorari and prohibition with prayer for preliminary injunction and/or issuance of a temporary restraining order, the Court, without giving due course to the petition, Resolved to: (1) require the respondent to COMMENT thereon, (not to file a motion to dismiss), within ten (10) days from notice; and (2) ISSUE the TEMPORARY RESTRAINING ORDER prayed for effective as of this date and to continue to be so effective during the entire period that the case is pending or until further orders.

XXX

NOW, THEREFORE, you (respondent), your officers, agents, representatives, and/or



officers, agents, representatives, and/or persons acting upon your orders or in your place or stead, are hereby ENJOINED from enforcing the challenged provisions of Republic Act No. 7881 and DAR Administrative Order No. 3, series of 1995.

xxx.

2. Pursuant to the abovequoted Supreme Court Resolution dated November 13, 1995, all concerned are hereby directed to suspend beginning November 13, 1995 the implementation of Sections 1, 2, and 3 of RA 7881 and A.O. 3, Series of 1995 insofar as they exempt fishponds and prawn farms from the coverage of the Comprehensive Agrarian reform law (CARL) until further orders from this Office.


Processing of applications for exemption/exclusion of fishponds and/or prawn farms pursuant to RA 7881 and A.O. No. 3, Series of 1995 filed before, on or after November 13, 1995 are to be held in abeyance pending further notice from this Office.

The field officers are allowed to accept applications from landowners who may wish to file the same; however, they should be advised that the processing should be suspended until further orders from the Supreme Court.

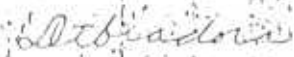
This Circular takes effect immediately and supercedes previous issuances inconsistent thereto.

For strict compliance.

20 November 1995

  
ERNESTO D. GARILAO  
Secretary

CERTIFIED TRUE COPY:

  
DAISY T. BIADON, CARPD

12/4/05

REPUBLIC OF THE PHILIPPINES  
COURT OF APPEALS  
MANILA

TENTH DIVISION

\*\*\*\*\*

BENTRO PARA SA TUNAY NA REPORMANG AGRARYO (BENTRA) FOUNDATION, NATIONWIDE COALITION OF FISHERFOLKS FOR AQUATIC REFORMS (NACFAR), PAMBANSANG LAKAS NG MAMAMALAKAYA NG PILIPINAS (PAMALAKAYA), NATIONAL NETWORK OF AGRARIAN REFORM ADVOCATES (NNARA), SAMAHAN NG MALAYANG MANGINGISDA - ANIBAN NG MANGGAGAWANG AGRICULTURA (SAMAMAAMA), UGNAYAN NG MGA MANGINGISDA SA BALAGTAS, KILUSANG MAGBUBUKID NG PILIPINAS (KMP), HON. FLORENCIO ABAD JR., HON. GREGORIO ANDOLANA, HON. MIKE DEFENSOR, HON. MILAGROS LAUREL-TRINIDAD, HON. OSCAR RODRIGUEZ and HON. WIGBERTO TANADA,

Petitioners,

CA-G.R. SP No. 41800

Members:

GONZAGA-REYES,  
Chairman  
MABUTAS, JR., and  
ALINO-HORMACHUELOS, JJ.

- versus -

Promulgated:

HON. SECRETARY OF AGRARIAN REFORM,

Respondent.

JAN 07 1997

*[Handwritten signature]* 1/7/97

DECISION

MABUTAS, JR., J.1

Before Us is a petition (certiorari and prohibition) assailing the constitutionality of Sections 1, 2 and 3 of Republic Act No. 7881, which amended Republic Act No. 6657 (the law which instituted the Comprehensive Agrarian Reform Program), and DAR Administrative Order No. 03, Series of 1995, which was issued by the respondent on May 16, 1995.

Tracking down the antecedent facts of the case, We discerned the following substantial developments:

On June 7, 1988, Congress passed the consolidated versions of House Bill No. 400 and Senate Bill No. 249, which legislation later became Republic Act No. 6657, otherwise known as Comprehensive Agrarian Reform Law of 1988.

Said law was subsequently amended by Republic Act No. 7881 which took effect on March 12, 1995.

The assailed Section 1 of said law (Republic Act No. 7881) amended Section 3, Paragraph (b) of Republic Act No. 6657 and was worded as follows:

"SEC. 3. Definitions. - For the purpose of this Act, unless the context indicates otherwise:

"(b) Agriculture, Agricultural Enterprise or Agricultural Activity means the cultivation of the soil, planting of crops, growing of fruits trees, including the harvesting of such farm products and other farm activities and practices performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical." page 2689, No. 18, Vol. 91 of the Official Gazette).

On the other hand, Section 2 of Republic Act No. 7881 amended Section 10 of Republic Act No. 6657 which reads as follows:

"(c) SEC. 10. Exemptions and Exclusions.--

"a) Lands actually, directly and exclusively used for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds and mangroves shall be exempt from the coverage of this Act.

"(b) Private lands actually, directly and exclusively used for prawn farms and fishponds shall be exempt from the coverage of this Act: *Provided*, That said prawn farms and fishponds have not been distributed and Certificate of Land Ownership Award (CLOA) issued to agrarian reform beneficiaries under the Comprehensive Agrarian Reform Program.

"In cases where the fishponds or prawn farms have been subjected to the Comprehensive Agrarian Reform Law, by voluntary offer to sell, or commercial farms deferment or notices of compulsory acquisition, a simple and absolute majority of the actual regular workers or tenants must consent to the exemption within one (1) year from the effectivity of this Act. When the workers or tenants do not agree to this exemption, the fishponds or prawn farms shall be distributed collectively to the worker-beneficiaries or tenants who shall form a cooperative or association to manage the same.

"In cases where the fishponds or prawn farms have not been subjected to the Comprehensive Agrarian Reform Law, the consent of the farm workers shall no longer be necessary, however, the provision of Section 32-A hereof on incentives shall apply."

"(c) Lands actually, directly and exclusively used and found to be necessary for national defense, school sites and campuses, including experimental farm stations operated by public or private schools for educational purposes, seeds and seedlings research and pilot production center, church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers and all lands with eighteen percent (18%) slope and over, except those already developed, shall be exempt from the coverage of the Act." (pages 2689-2690, id.).

While Section 3 of Republic Act No. 7881 amended Section 11, Paragraph 1 of Republic Act No. 6657 and is worded as follows:

"SEC. 11. *Commercial Farming*--Commercial farms, which are private agricultural lands devoted to saltbeds, fruit farms, orchards, vegetable and cut-flower farms, and cacao, coffee and rubber plantations, shall be subject to immediate compulsory acquisition and distribution after ten (10) years from the effectivity of this Act. In the case of new farms, the ten-year period shall begin from the first year of commercial production and operation, as determined by the DAR. During the ten-year period, the Government shall initiate steps necessary to acquire these lands, upon payment of just compensation for the land and the improvements thereon, preferably in favor of organized cooperatives or associations, which shall thereafter manage the said lands for the workers-beneficiaries." (page 2690, id.).

On May 16, 1995, the respondent promulgated Administrative Order No. 3, Series of 1995, entitled "Rules and Regulations Governing the Exemption/Exclusion of Fishponds and Prawn Farms from the Coverage of the Comprehensive Agrarian Reform Law (CARL) x x x," pursuant to Rep. Act No. 6657, as amended by R.A. No. 7881, which order took effect on May 27, 1995.

The foregoing development spurred the petitioners to file a petition (G.R. No. 122170) with the Supreme Court (pages 3-43 of the Rollo) alleging that Sections 1, 2 and 3 of Republic Act No. 7881 are "violative of the Constitution." They averred:

"x x x By exempting fishponds and prawn farms, Congress has transcended the constitutional mandate which calls for the coverage of ALL agricultural lands, including fishponds and prawn farms under agrarian reform x x x.

"The passing into law of this Amendatory Act constitutes grave abuse of power and discretion by Congress amounting to lack or excess of jurisdiction which must be corrected by this Honorable Court in the exercise of its judicial power x x x." (page 4, Petition).

The petitioners also contended that the respondent "acted without or in excess of his jurisdiction and with grave abuse of discretion in enforcing Republic Act No. 7881 and in promulgating Administrative Order No. 3, Series of 1995" (page 14, Petition).

Branding their petition as an original action for certiorari and prohibition under Rule 65 of the Rules of Court," the petitioners interposed the following grounds therefor:

"A. REPUBLIC ACT NO. 7881 IS UNCONSTITUTIONAL BECAUSE THE CONSTITUTION MANDATES THE JUST DISTRIBUTION OF ALL AGRICULTURAL LANDS, INCLUSIVE OF FISHPONDS AND PRAWNFARMS, UNDER THE AGRARIAN REFORM PROGRAM.

"B. REPUBLIC ACT NO. 7881 IS UNCONSTITUTIONAL BECAUSE THE EXEMPTION OF FISHPONDS AND PRAWN FARMS FROM THE AGRARIAN REFORM PROGRAM IS VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION INASMUCH AS FARMERS AND FISHERFOLKS STAND ON THE SAME FOOTING.

"C. REPUBLIC ACT NO. 7881 IS UNCONSTITUTIONAL BECAUSE THE EXEMPTION OF FISHPONDS AND PRAWNFARMS RUNS CONTRARY TO THE REDISTRIBUTIVE SPIRIT OF THE SOCIAL JUSTICE PROVISION OF THE CONSTITUTION." (pages 14-15, the Petition).

On November 13, 1995, the Supreme Court issued a resolution, part of which reads as follows:

"Considering the special civil action for certiorari and prohibition with prayer for preliminary injunction and/or issuance of a

temporary restraining order, the Court, without giving due course to the petition, Resolved to: (1) require the respondent to COMMENT thereon, (not to file a motion to dismiss), within ten (10) days from notice; and (2) ISSUE the TEMPORARY RESTRAINING ORDER prayed for effective as of this date and to continue to be so effective during the entire period that the case is pending or until further orders. x x x" (page 82, Rollo).

On December 21, 1995, an interested party (Tomas C. Llamas) filed a "Motion For Leave Of Court To File Comment By Way Of Intervention" (page 101, id.), which comment he filed on January 19, 1996 (pp.119-141, id.).

On April 22, 1996, other individuals (the Chamber of Fisheries and Aquatic Resources of the Philippines, Inc., Edgardo G. Sarrosa, Arnolo I. Goco, and Alonso L. Tan) filed an urgent motion for leave to intervene (pages 182-184, id.), attaching thereto their answer in intervention (pages 185-221, id.).

On July 31, 1996, the Supreme Court handed down a resolution referring the case to this Court "for proper determination and disposition" (page 224, id.).


The petition is devoid of merit.

After a fine filtration of the petition--taking note also of the "Answer in Intervention" filed by intervenors Chamber of Fisheries and Aquatic Resources of the Philippines, Inc. et al. (pages 185-223, Rollo) and the Comment filed by interested party Tomas C. Llamas (pages 119-140, id.)--this Court, taking note of the Supreme Court's ruling in Mariano, Jr. vs. Commission on Elections (242 SCRA 211) feels that it cannot entertain this challenge to the constitutionality of Sections 1, 2 and 3 of Republic Act No. 7881 and DAR Administrative Order No. 3, Series of 1995 which implemented the same. As stated in said case, the requirements before a litigant can challenge the constitutionality of a law are well-delineated, to wit: (1) there must be an actual case or controversy; (2) the question of constitutionality must be raised by the proper party; (3) the constitutional question must be raised at the earliest possible opportunity; and (4) the decision on the constitutional question must be necessary to the determination of the case itself (Dumlao vs. COMELEC, 95 SCRA 392).

Relative to the first requirement (it has been opined that an actual case or controversy involves a conflict of legal rights--an assertion of opposite legal claims susceptible of judicial adjudication. Said

case must not be moot, academic, or based on extra-legal or other similar considerations not cognizable by a court of justice. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.

On the other hand, the term "controversy" was classified thus: It must be one that is appropriate for judicial determination. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character or from one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree that is conclusive in character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. (*Aetna Life Ins. Co. vs. Haworth*, 300 U.S. 227).



In the case at bench, such requirement is wanting. As aptly observed by the intervenors (Chamber of Fisheries and Aquatic Resources of the Philippines, Inc. et al.), such need standards for the exercise of judicial review of a law on the ground of unconstitutionality are "totally wanting" (pages 12-22, Answer In Intervention). The petition does not show/mention any actual case or controversy arising from the disputed law (Republic Act No. 7881), the decision of which (the constitutionality of the law) is necessary for the determination of said case/controversy. There is no showing that the petitioners ever questioned the constitutionality of RA 7881 before the respondent Secretary of Agrarian Reform. Also, they never assailed the respondent's guidelines to enforce the law (Administrative Order No.3, Series of 1995) before any forum before filing the instant petition with the Supreme Court. Much less did they call his (respondent's) attention to any injury or threatened personal injury arising from the enforcement of the afore-mentioned administrative order. Further, they did not file any case with the lower courts asking that they be relieved from obeying the questioned law on constitutional grounds.

With respect to the second requirement, We are reminded of Justice Jose P. Laurel's posture that "the person who impugns the validity of a statute must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement" (*People vs. Vera*, 65 Phil. 56). A proper party then is one who has sustained or is in immediate danger of sustaining an injury as a result of the act complained of (*Ex Parte Levitt*, 303 U.S. 633). Thus, until and unless such

actual or potential injury is established, the complainant cannot have the legal personality to raise the constitutional question.

In the case at bench, the petitioners merely aver that their members are "directly and adversely affected by the challenged provisions of the law," but such averment was not conceptualized (how, when or where) thereby portraying merely contingencies which may or may not happen. In short, a hypothetical issue is being foisted as they may not even be the party(ies) to be adversely affected by the enforcement of the law they are now challenging. As aptly observed by the intervenors, the petitioners "have no locus standi or standing, because they have no interest personal and substantial to raise constitutional questions"--"they have not shown any direct, personal, immediate and substantial injury arising from operation of the statute, as well as no burdens or penalties by reason of said statute." (pages 15-16, Answer In Intervention). Indeed, petitioners' averments appeared to be anchored on speculations, there being no clear showing as to how they are, or will be, adversely affected by the questioned legislation. As has been ruled, a controversy must be one that is appropriate or "ripe" for determination, not conjectural or anticipatory (*Garcia vs. Executive Secretary*, 204 SCRA 516).

Aside from the foregoing, this Court failed to see any grave abuse of discretion committed by the respondent in enforcing Republic Act No. 7881 since he was duty-bound to do so. At this juncture, We wish to state anew that the special civil action for certiorari is a remedy designed for the correction of errors of jurisdiction (which the respondent unquestionably had) and not errors of judgment (*Estrada vs. Sto. Domingo*, 28 SCRA 890; *Bimeda vs. Perez, et al.*, 93 Phil. 636; *Fernando vs Vasquez*, 31 SCRA 288; *Butuan Bay Wood Export Corp. vs. Court of Appeals, et al.*, 97 SCRA 297; *Ramnani vs. Court of Appeals*, 221 SCRA 582). It will not even issue for simple abuse of discretion (*University of the Philippines vs. Civil Service Commission*, 228 SCRA 207). When the issue or question involved affects the wisdom or soundness of a decision, not jurisdiction to render said decision or its validity, the same is beyond the province of the special civil action of certiorari (*Philippine Surety and Insurance Co. vs. Jacala, et al.*, 108 Phil. 177; *Makabingkil vs. Peoples Homesite And Housing Corp.*, 72 SCRA 326; *Illacac vs. Court of Appeals, et al.*, 78 SCRA 301).

As could be gleaned from the records, the respondent was just acting in accord with the law (RA 7881). Thus, if in so acting he committed any error, he was not deprived of his jurisdiction or power to hand down



the assailed administrative order (No. 3, Series of 1995). Also, jurisprudence dictates that in the exercise of discretionary functions, good faith is always presumed (Llanto vs. Dimaporo, et al., 16 SCRA 599)-- and on the party alleging bad faith lies the burden of proof. On this score, the petitioners failed (Mama, Jr. vs. Court of Appeals, 196 SCRA 498). Thus, unless there is grave abuse of discretion, the courts may not review the discretionary act of a public officer (Insular Motors, Inc. vs. City of Manila, et al., 67 Phil. 201). It is the policy of the courts not to interfere with the actions of the executive branch unless there is a clear showing of capricious and whimsical exercise of judgment or grave abuse of discretion amounting to lack or excess of jurisdiction (Pajo, etc., et al. vs. Ago and Ortiz, etc., 108 Phil 905; Philippine National Construction Corporation vs. National Labor Relations Commission, 217 SCRA 455), which fact does not exist in the case at bench. Further, subject to well-settled exceptions not present here, certiorari does not lie against the legislative and executive branches or the members thereof acting in the exercise of their official functions, basically in consideration of the respect due from the judiciary to said departments of co-equal and coordinate ranks under the principle of separation of powers. Resultantly, the instant petition has to be junked.

Similarly, it has been ruled that a petition for prohibition must be based on jurisdictional grounds (Vda. de Suan vs. Unson, 185 SCRA 437). It is designed to prevent the use of the strong arm of the law in an oppressive or vindictive manner (Planas vs. Gil, 67 Phil. 62; Lopez vs. City Judge, 18 SCRA 616). And to justify its issuance, there are certain requisites which must be complied with (Guingona, Jr. vs. City Fiscal of Manila, 137 SCRA 597). Unfortunately, the petitioner failed to comply with such requisites.

With the foregoing, petitioners' prayer for an injunctive relief finds no anchorage, for entitlement thereof necessitates a clear showing of a right--and others--claimed by them, as ruled in a long line of cases decided by the Supreme Court (Active Wood Products, Inc. vs. Intermediate Appellate Court, 183 SCRA 671; Viray vs. Court of Appeals, 191 SCRA 308; S & A Gaisano Incorporated vs. Hidalgo, 192 SCRA 224; Dionisio vs. Ortiz, 204 SCRA 746; Searth Commodities Corporation vs. Court of appeals, 207 SCRA 622; Syndicated Media Access Corporation vs. Court of Appeals, 219 SCRA 794; Carino vs. Capulong, 222 SCRA 593; Philip Morris, Inc. vs. Court of Appeals, 224 SCRA 576; Knecht vs. Court of Appeals, 228 SCRA 1), which requisites were not established in the case at bench. This Court cannot compel an agency to do a particular act or enjoin

such act which is within its prerogative, except when in the exercise of its authority it gravely abuses or exceeds its jurisdiction (Provident Tree Farms, Inc. vs. Batario, Jr., 231 SCRA 463), which act was not established.

As We come to the finis, this Court wishes to quote the following pronouncement of the Supreme Court in Garcia vs. Secretary (supra):

"x x x The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments. The theory is that as the joint act of Congress and the President of the Philippines, a law has been carefully studied and determined to be in accordance with the fundamental law before it was finally enacted."

WHEREFORE, premises considered, the petition is hereby DENIED DUE COURSE--and the same DISMISSED.

SO ORDERED.



RAMON MABUTAS, JR.  
Associate Justice

WE CONCUR:

  
MINERVA P. GONZAGA-REYES  
Associate Justice

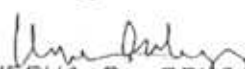
  
PORTIA ALINO-HORMACHUELOS  
Associate Justice

**C E R T I F I C A T I O N**

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with Section 13, Article VIII of the Constitution.

526  
CERTIFIED XEROX COPY

41800-SP-LEK O. COURT

  
MINERVA P. GONZAGA-REYES  
CHAIRMAN  
TENTH DIVISION

REPUBLIC OF THE PHILIPPINES  
COURT OF APPEALS  
M A N I L A

FORMER TENTH DIVISION  
\*\*\*\*\*VISION

SENTRO PARA SA TUNAY NA REPOR-  
MANG AGRARYO (SENTRA) FOUNDA-  
TION. NATIONWIDE COALITION OF  
FISHERFOLKS FOR AQUATIC REFORMS  
(NACFAR), PAMBANSANG LAKAS NG  
MAMAMALAKAYA NG PILIPINAS (PAMA-  
LAKAYA), NATIONAL NETWORK OF AG-  
RARIAN REFORM ADVOCATES (NNARA),  
SAMAHAN NG MALAYANG MANGINGISDA  
- ANIBAN NG MANGGAGAWANG AGRI-  
KULTURA (SAMAMAAMA), UGNAYAN NG  
MGA MANGINGISDA SA BALAGTAS,  
KILUSANG MAGBUBUKID NG PILIPINAS  
(KMP), HON. FLORENCIO ABAD JR.,  
HON. GREGORIO ANDOLANA, HON.  
MIKE DEFENSOR, HON. MILAGROS  
LAUREL-TRINIDAD, HON. OSCAR  
RODRIGUEZ and HON. WIGBERTO  
TANADA.

Petitioners.

CA-G.R. SP No. 41800

Members:

GONZAGA-REYES,

Chairman

MABUTAS, JR., and

\*AQUINO, JJ.

- versus -

Promulgated:

HON. SECRETARY OF AGRARIAN  
REFORM.

Respondent.

JUL 09 1997


x-----x

R E S O L U T I O N

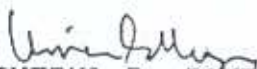
MABUTAS, JR., J.:


Up for consideration is petitioners' "Motion for Reconsideration" (pages 238-254 of the Rollo). Considering respondent's comment (pages 276-286, id.) thereon, the same is hereby DENIED--and this Court's decision of January 7, 1997 (pages 227-235, id.) stands.

IT IS SO ORDERED.

  
RAMON MABUTAS, JR.  
Associate Justice

WE CONCUR:

  
MINERVA P. GONZAGA-REYES  
Associate Justice  
Chairman

  
HILARTON L. AQUINO  
Associate Justice

\* Vice-J P. Aliño-Hormachuelos

Supreme Court  
Manila

SECOND DIVISION

Gentlemen:

Quoted hereunder, for your information, is a resolution of this Court dated July 31, 1996:

G.R. No. 122170 (*Sentro Para sa Tunay na Repormang Agraryo Foundation, et al. vs. Secretary of Agrarian Reform*). - Let this case be REFERRED to the Court of Appeals for proper determination and disposition pursuant to Revised Administrative Circular No. 1-95 dated May 16, 1995.

Very truly yours,

TOMASITA B. MAGAY-DRIS  
Clerk of Court  
Second Division

By:

*[Signature]*  
LUDICHI YASAY-NINAG  
Asst. Div. Clerk of Court

G.R. 122170

ATTY. ERNESTO P. PANGALANGAN (reg)  
Counsel for Respondents-Intervenors  
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(75)

COURT OF APPEALS (reg)  
Manila

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(Counsel for Petitioners)

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Judicial Records Office (r)  
Supreme Court, Manila

Atty. Berfin Samson  
Council for Public Sup. DAR  
litigation, LAO  
Dept. of Agrarian Reform  
Room 101, DAR Main Bldg.  
Elliptical Road, Diliman, Q.C.

REPUBLIC OF THE PHILIPPINES  
COURT OF APPEALS  
M A N I L A

TENTH DIVISION

\*\*\*\*\*

SENTRO PARA SA TUNAY NA REPOR-  
MANG AGRARYO (SENTRA) FOUNDA-  
TION, NATIONWIDE COALITION OF  
FISHERFOLKS FOR AQUATIC REFORMS  
(NACFAR), PAMBANSANG LAKAS NG  
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MGA MANGINGISDA SA BALAGTAS,  
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HON. GREGORIO ANDOLANA, HON.  
MIKE DEFENSOR, HON. MILAGROS  
LAUREL-TRINIDAD, HON. OSCAR  
RODRIGUEZ and HON. WIGBERTO  
TANADA,

Petitioners,

- versus -

HON. SECRETARY OF AGRARIAN  
REFORM,

Respondent.

CA-G.R. SP No. 41800

Members:

GONZAGA-REYES,

Chairman

MABUTAS, JR., and

ALIÑO-HORMACHUELOS, JJ.

Promulgated:

JAN 07 1997

*[Handwritten signature]*  
1/7/97

D E C I S I O N

MABUTAS, JR., J.:

Before Us is a petition (certiorari and prohibi-  
tion) assailing the constitutionality of Sections 1, 2  
and 3 of Republic Act No. 7881, which amended Republic  
Act No. 6657 (the law which instituted the Comprehen-  
sive Agrarian Reform Program), and DAR Administrative  
Order No. 03, Series of 1995, which was issued by the  
respondent on May 16, 1995.

Tracking down the antecedent facts of the case, We  
discerned the following substantial developments:

On June 7, 1988, Congress passed the consolidated  
versions of House Bill No.400 and Senate Bill No. 249,  
which legislation later became Republic Act No. 6657,  
otherwise known as Comprehensive Agrarian Reform Law  
of 1988.

Said law was subsequently amended by Republic Act No. 7881 which took effect on March 12, 1975.

The assailed Section 1 of said law (Republic Act No. 7881) amended Section 3, Paragraph (b) of Republic Act No. 6657 and was worded as follows:

SECTION 3. Definitions. - For the purpose of this Act, unless the context indicates otherwise:

"(b) Agriculture, Agricultural Enterprise or Agricultural Activity means the cultivation of the soil, planting of crops, growing of fruits trees, including the harvesting of such farm products and other farm activities and practices performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical." page 2689, No. 18, Vol. 91 of the Official Gazette).

On the other hand, Section 2 of Republic Act No. 7881 amended Section 10 of Republic Act No. 6657 which reads as follows:

"(c) SEC. 10. Exemptions and Exclusions.--

"(a) Lands actually, directly and exclusively used for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds and mangroves shall be exempt from the coverage of this Act.

"(b) Private lands actually, directly and exclusively used for prawn farms and fishponds shall be exempt from the coverage of this Act: *Provided*, That said prawn farms and fishponds have not been distributed and Certificate of Land Ownership Award (CLOA) issued to agrarian reform beneficiaries under the Comprehensive Agrarian Reform Program.

"In cases where the fishponds or prawn farms have been subjected to the Comprehensive Agrarian Reform Law, by voluntary offer to sell, or commercial farms deferment or notices of compulsory acquisition, a simple and absolute majority of the actual regular workers or tenants must consent to the exemption within one (1) year from the effectivity of this Act. When the workers or tenants do not agree to this exemption, the fishponds or prawn farms shall be distributed collectively to the worker-beneficiaries or tenants who shall form a cooperative or association to manage the same.

"In cases where the fishponds or prawn farms have not been subjected to the Comprehensive Agrarian Reform Law, the consent of the farm workers shall no longer be necessary, however, the provision of Section 32-A hereof on incentives shall apply."

"(c) Lands actually, directly and exclusively used and found to be necessary for national defense, school sites and campuses, including experimental farm stations operated by public or private schools for educational purposes, seeds and seedlings research and pilot production center, church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers and all lands with eighteen percent (18%) slope and over, except those already developed, shall be exempt from the coverage of the Act." (pages 2689-2690, id.).

While Section 3 of Republic Act No. 7881 amended Section 11, Paragraph 1 of Republic Act No. 6657 and is worded as follows:

"SEC. 11. *Commercial Farming*--Commercial farms, which are private agricultural lands devoted to saltbeds, fruit farms, orchards, vegetable and cut-flower farms, and cacao, coffee and rubber plantations, shall be subject to immediate compulsory acquisition and distribution after ten (10) years from the effectivity of this Act. In the case of new farms, the ten-year period shall begin from the first year of commercial production and operation, as determined by the DAR. During the ten-year period, the Government shall initiate steps necessary to acquire these lands, upon payment of just compensation for the land and the improvements thereon, preferably in favor of organized cooperatives or associations, which shall thereafter manage the said lands for the workers-beneficiaries." (page 2690, id.).

On May 16, 1995, the respondent promulgated Administrative Order No. 3, Series of 1995, entitled "Rules and Regulations Governing the Exemption/Exclusion of Fishponds and Prawn Farms from the Coverage of the Comprehensive Agrarian Reform Law (CARL) x x x," pursuant to Rep. Act No. 6657, as amended by R.A. No. 7881, which order took effect on May 27, 1995.

D e c i s i o n

The foregoing development spurred the petitioners to file a petition (G.R. No. 122170) with the Supreme Court (pages 3-43 of the Rollo) alleging that Sections 1, 2 and 3 of Republic Act No. 7781 are "violative of the Constitution." They averred:

"x x x By exempting fishponds and prawn farms, Congress has transcended the constitutional mandate which calls for the coverage of ALL agricultural lands, including fishponds and prawn farms under agrarian reform x x x.

"The passing into law of this Amendatory Act constitutes grave abuse of power and discretion by Congress amounting to lack or excess of jurisdiction which must be corrected by this Honorable Court in the exercise of its judicial power x x x." (page 4, Petition).

The petitioners also contended that the respondent "acted without or in excess of his jurisdiction and with grave abuse of discretion in enforcing Republic Act No. 7881 and in promulgating Administrative Order No. 3, Series of 1995" (page 14, Petition).

Branding their petition as an original action for certiorari and prohibition under Rule 65 of the Rules of Court," the petitioners interposed the following grounds therefor:

"A. REPUBLIC ACT NO. 7881 IS UNCONSTITUTIONAL BECAUSE THE CONSTITUTION MANDATES THE JUST DISTRIBUTION OF ALL AGRICULTURAL LANDS, INCLUSIVE OF FISHPONDS AND PRAWNFARMS, UNDER THE AGRARIAN REFORM PROGRAM.

"B. REPUBLIC ACT NO. 7881 IS UNCONSTITUTIONAL BECAUSE THE EXEMPTION OF FISHPONDS AND PRAWN FARMS FROM THE AGRARIAN REFORM PROGRAM IS VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION INASMUCH AS FARMERS AND FISHERFOLKS STAND ON THE SAME FOOTING.

"C. REPUBLIC ACT NO. 7881 IS UNCONSTITUTIONAL BECAUSE THE EXEMPTION OF FISHPONDS AND PRAWNFARMS RUNS CONTRARY TO THE REDISTRIBUTIVE SPIRIT OF THE SOCIAL JUSTICE PROVISION OF THE CONSTITUTION." (pages 14-15, the Petition).

On November 13, 1995, the Supreme Court issued a resolution, part of which reads as follows:

"Considering the special civil action for certiorari and prohibition with prayer for preliminary injunction and/or issuance of a



temporary restraining order, the Court, without giving due course to the petition, Resolved to: (1) require the respondent to COMMENT thereon, (not to file a motion to dismiss), within ten (10) days from notice; and (2) ISSUE the TEMPORARY RESTRAINING ORDER prayed for effective as of this date and to continue to be so effective during the entire period that the case is pending or until further orders. x x x" (page 82, Rollo).

On December 21, 1995, an interested party (Tomas C. Llamas) filed a "Motion For Leave Of Court To File Comment By Way Of Intervention" (page 101, id.), which comment he filed on January 19, 1996 (pp.119-141, id.).

On April 22, 1996, other individuals (the Chamber of Fisheries and Aquatic Resources of the Philippines, Inc., Edgardo G. Sarrosa, Arnolo I. Goco, and Alonso L. Tan) filed an urgent motion for leave to intervene (pages 182-184, id.), attaching thereto their answer in intervention (pages 185-221, id.).

On July 31, 1996, the Supreme Court handed down a resolution referring the case to this Court "for proper determination and disposition" (page 224, id.).

The petition is devoid of merit.

After a fine filtration of the petition--taking note also of the "Answer in Intervention" filed by intervenors Chamber of Fisheries and Aquatic Resources of the Philippines, Inc. et al. (pages 185-223, Rollo) and the Comment filed by interested party Tomas C. Llamas (pages 119-140, id.)--this Court, taking note of the Supreme Court's ruling in Mariano, Jr. vs. Commission on Elections (242 SCRA 211) feels that it cannot entertain this challenge to the constitutionality of Sections 1, 2 and 3 of Republic Act No. 7881 and DAR Administrative Order No. 3, Series of 1995 which implemented the same. As stated in said case, the requirements before a litigant can challenge the constitutionality of a law are well-delineated, to wit: (1) there must be an actual case or controversy; (2) the question of constitutionality must be raised by the proper party; (3) the constitutional question must be raised at the earliest possible opportunity; and (4) the decision on the constitutional question must be necessary to the determination of the case itself (Dumlao vs. COMELEC, 95 SCRA 392).

Relative to the first requirement (it has been opined that an actual case or controversy involves a conflict of legal rights--an assertion of opposite legal claims susceptible of judicial adjudication. Said

case must not be moot, academic, or based on extra-legal or other similar considerations not cognizable by a court of justice. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.

On the other hand, the term "controversy" was classified thus: It must be one that is appropriate for judicial determination. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character or from one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree that is conclusive in character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. (*Aetna Life Ins. Co. vs. Haworth*, 300 U.S. 227).

In the case at bench, such requirement is wanting. As aptly observed by the intervenors (*Chamber of Fisheries and Aquatic Resources of the Philippines, Inc. et al.*), such need standards for the exercise of judicial review of a law on the ground of unconstitutionality are "totally wanting" (pages 12-22, Answer In Intervention). The petition does not show/mention any actual case or controversy arising from the disputed law (Republic Act No. 7881), the decision of which (the constitutionality of the law) is necessary for the determination of said case/controversy. There is no showing that the petitioners ever questioned the constitutionality of RA 7881 before the respondent Secretary of Agrarian Reform. Also, they never assailed the respondent's guidelines to enforce the law (Administrative Order No.3, Series of 1995) before any forum before filing the instant petition with the Supreme Court. Much less did they call his (respondent's) attention to any injury or threatened personal injury arising from the enforcement of the aforementioned administrative order. Further, they did not file any case with the lower courts asking that they be relieved from obeying the questioned law on constitutional grounds.

With respect to the second requirement, We are reminded of Justice Jose P. Laurel's posture that "the person who impugns the validity of a statute must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement" (*People vs. Vera*, 65 Phil. 56). A proper party then is one who has sustained or is in immediate danger of sustaining an injury as a result of the act complained of (*Ex Parte Levitt*, 303 U.S. 633). Thus, until and unless such

actual or potential injury is established, the complainant cannot have the legal personality to raise the constitutional question.

In the case at bench, the petitioners merely aver that their members are "directly and adversely affected by the challenged provisions of the law," but such averment was not conceptualized (how, when or where) thereby portraying merely contingencies which may or may not happen. In short, a hypothetical issue is being foisted as they may not even be the party(ies) to be adversely affected by the enforcement of the law they are now challenging. As aptly observed by the intervenors, the petitioners "have no locus standi or standing, because they have no interest personal and substantial to raise constitutional questions"--"they have not shown any direct, personal, immediate and substantial injury arising from operation of the statute, as well as no burdens or penalties by reason of said statute." (pages 15-16, Answer In Intervention). Indeed, petitioners' averments appeared to be anchored on speculations, there being no clear showing as to how they are, or will be, adversely affected by the questioned legislation. As has been ruled, a controversy must be one that is appropriate or "ripe" for determination, not conjectural or anticipatory (*Garcia vs. Executive Secretary*, 204 SCRA 516).

Aside from the foregoing, this Court failed to see any grave abuse of discretion committed by the respondent in enforcing Republic Act No. 7881 since he was duty-bound to do so. At this juncture, We wish to state anew that the special civil action for certiorari is a remedy designed for the correction of errors of jurisdiction (which the respondent unquestionably had) and not errors of judgment (*Estrada vs. Sto. Domingo*, 28 SCRA 890; *Bimeda vs. Perez, et al.*, 93 Phil. 636; *Fernando vs Vasquez*, 31 SCRA 288; *Butuan Bay Wood Export Corp. vs. Court of Appeals, et al.*, 97 SCRA 297; *Ramnani vs. Court of Appeals*, 221 SCRA 582). It will not even issue for simple abuse of discretion (*University of the Philippines vs. Civil Service Commission*, 228 SCRA 207). When the issue or question involved affects the wisdom or soundness of a decision, not jurisdiction to render said decision or its validity, the same is beyond the province of the special civil action of certiorari (*Philippine Surety and Insurance Co. vs. Jacala, et al.*, 108 Phil. 177; *Makabingkil vs. Peoples Homesite And Housing Corp.*, 72 SCRA 326; *Ilacad vs. Court of Appeals, et al.*, 78 SCRA 301).

As could be gleaned from the records, the respondent was just acting in accord with the law (RA 7881). Thus, if in so acting he committed any error, he was not deprived of his jurisdiction or power to hand down

the assailed administrative order (No. 3, Series of 1975). Also, jurisprudence dictates that in the exercise of discretionary functions, good faith is always presumed (Llanto vs. Dimaporo, et al., 16 SCRA 599)-- and on the party alleging bad faith lies the burden of proof. On this score, the petitioners failed (Mama, Jr. vs. Court of Appeals, 196 SCRA 498). Thus, unless there is grave abuse of discretion, the courts may not review the discretionary act of a public officer (Insular Motors, Inc. vs. City of Manila, et al., 67 Phil. 201). It is the policy of the courts not to interfere with the actions of the executive branch unless there is a clear showing of capricious and whimsical exercise of judgment or grave abuse of discretion amounting to lack or excess of jurisdiction (Pajo, etc., et al. vs. Ago and Ortiz, etc., 108 Phil 905; Philippine National Construction Corporation vs. National Labor Relations Commission, 217 SCRA 455), which fact does not exist in the case at bench. Further, subject to well-settled exceptions not present here, certiorari does not lie against the legislative and executive branches or the members thereof acting in the exercise of their official functions, basically in consideration of the respect due from the judiciary to said departments of co-equal and coordinate ranks under the principle of separation of powers. Resultantly, the instant petition has to be junked.

Similarly, it has been ruled that a petition for prohibition must be based on jurisdictional grounds (Vda. de Suan vs. Unson, 185 SCRA 437). It is designed to prevent the use of the strong arm of the law in an oppressive or vindictive manner (Planas vs. Gil, 67 Phil. 62; Lopez vs. City Judge, 18 SCRA 616). And to justify its issuance, there are certain requisites which must be complied with (Guingona, Jr. vs. City Fiscal of Manila, 137 SCRA 597). Unfortunately, the petitioner failed to comply with such requisites.

With the foregoing, petitioners' prayer for an injunctive relief finds no anchorage, for entitlement thereof necessitates a clear showing of a right--and others--claimed by them, as ruled in a long line of cases decided by the Supreme Court (Active Wood Products, Inc. vs. Intermediate Appellate Court, 183 SCRA 671; Viray vs. Court of Appeals, 191 SCRA 308; S & A Gaisano Incorporated vs. Hidalgo, 192 SCRA 224; Dionisio vs. Ortiz, 204 SCRA 746; Searth Commodities Corporation vs. Court of appeals, 207 SCRA 622; Syndicated Media Access Corporation vs. Court of Appeals, 219 SCRA 794; Carino vs. Capulong, 222 SCRA 593; Philip Morris, Inc. vs. Court of Appeals, 224 SCRA 576; Knecht vs. Court of Appeals, 228 SCRA 1), which requisites were not established in the case at bench. This Court cannot compel an agency to do a particular act or enjoin

such act which is within its prerogative, except when in the exercise of its authority it gravely abuses or exceeds its jurisdiction (Provident Tree Farms, Inc. vs. Batario, Jr., 231 SCRA 463), which act was not established.

As We come to the finis, this Court wishes to quote the following pronouncement of the Supreme Court in Garcia vs. Secretary (supra):

"x x x The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments. The theory is that as the joint act of Congress and the President of the Philippines, a law has been carefully studied and determined to be in accordance with the fundamental law before it was finally enacted."

WHEREFORE, premises considered, the petition is hereby DENIED DUE COURSE--and the same DISMISSED.

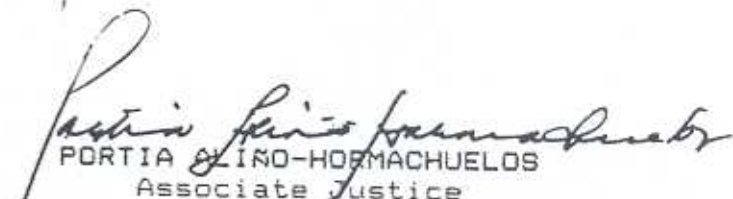
SO ORDERED.



RAMON MABUTAS, JR.  
Associate Justice

WE CONCUR:

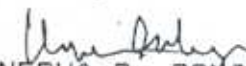
  
MINERVA P. GONZAGA-REYES  
Associate Justice

  
PORTIA LINO-HORMACHUELOS  
Associate Justice

### CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with Section 13, Article VIII of the Constitution.

526

  
MINERVA P. GONZAGA-REYES  
CHAIRMAN  
TENTH DIVISION

S. No. 740  
H. No. 918

Republic of the Philippines  
Congress of the Philippines  
Metro Manila

Third Regular Session

Began and held in Metro Manila, on Monday the twenty-fifth day of July,  
nineteen hundred and ninety-four.

[ REPUBLIC ACT NO. 7331 ]

AN ACT AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 6657, ENTITLED "AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES"

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section 3, Paragraph (b) of Republic Act No. 6657 is hereby amended to read as follows:

"SECTION 3. *Definitions.* - For the purpose of this Act, unless the context indicates otherwise:

"(b) Agriculture, Agricultural Enterprise or Agricultural Activity means the cultivation of the soil, planting of crops, growing of fruit trees, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical."

SEC. 3. Section 11, Paragraph 1 is hereby amended to read as follows:

"SECTION 11. *Commercial Farming.* - Commercial farms, which are private agricultural lands devoted to saltbeds, fruit farms, orchards, vegetable and cut-flower farms, and cacao, coffee and rubber plantations, shall be subject to immediate compulsory acquisition and distribution after ten (10) years from the effectivity of this Act. In the case of new farms, the ten-year period shall begin from the first year of commercial production and operation, as determined by the DAR. During the ten-year period, the Government shall initiate steps necessary to acquire these lands, upon payment of just compensation for the land and the improvements thereon, preferably in favor of organized cooperatives or associations, which shall thereafter manage the said lands for the workers-beneficiaries."

SEC. 4. There shall be incorporated after Section 32 of Republic Act No. 6657 a new section to read as follows:

"SECTION 32-A. *Incentives.* - Individuals or entities owning or operating fishponds and prawn farms are hereby mandated to execute within six (6) months from the effectivity of this Act, an incentive plan with their regular fishpond or prawn farm workers or fishpond or prawn farm workers' organization, if any, whereby seven point five percent (7.5%) of their net profit before tax from the operation of the fishpond or prawn farms are distributed within sixty (60) days at the end of the fiscal year as compensation to regular and other pond workers in such ponds over and above the compensation they currently receive.

"In order to safeguard the right of the regular fishpond or prawn farm workers under the incentive plan, the books of the fishpond or prawn farm owners shall be subject to periodic audit or inspection by certified public accountants chosen by the workers.

"The foregoing provision shall not apply to agricultural lands subsequently converted to fishponds or prawn farms provided the size of the land converted does not exceed the retention limit of the landowner."

SEC. 5. There shall be incorporated after Section 65 of Republic Act No. 6657 new sections to read as follows:

"SECTION 65-A. *Conversion into Fishpond and Prawn Farms*. - No conversion of public agricultural lands into fishponds and prawn farms shall be made except in situations where the provincial government with the concurrence of the Bureau of Fisheries and Aquatic Resources (BFAR) declares a coastal zone as suitable for fishpond development. In such case, the Department of Environment and Natural Resources (DENR) shall allow the lease and development of such areas; *Provided*, That the declaration shall not apply to environmentally critical projects and areas as contained in title (A) sub-paragraph two, (B-5) and (C-1) and title (B), number eleven (11) of Proclamation No. 2146, entitled "Proclaiming Certain Areas and Types of Projects as Environmentally Critical and Within the Scope of the Environmental Impact Statement (EIS) System established under Presidential Decree No. 1586," to ensure the protection of river systems, aquifers and mangrove vegetation from pollution and environmental degradation; *Provided, further*; That the approval shall be in accordance with a set of guidelines to be drawn up and promulgated by the DAR and the BFAR; *Provided, furthermore*, That small-farmer cooperatives and organizations shall be given preference in the award of the Fishpond Lease Agreements (FLAs).

"No conversion of more than five (5) hectares of private lands to fishponds and prawn farms shall be allowed after the passage of this Act, except when the use of the land is more economically feasible and sound for fishpond and/or prawn farm, as certified by the Bureau of Fisheries and Aquatic Resources (BFAR), and a simple and absolute majority of the regular farm workers or tenants agree to the conversion, the Department of Agrarian Reform, may approve applications for change in the use of the land; *Provided, finally*, That no piecemeal conversion to circumvent the provisions of this Act shall be allowed. In these cases where the change of use is approved, the provisions of Section 32-A hereof on incentives shall apply."

"SECTION 65-B. *Inventory*. - Within one (1) year from the effectivity of this Act, the BFAR shall undertake and finish an inventory of all government and private fishponds and prawn farms, and undertake a program to promote the sustainable management and utilization of prawn farms and fishponds. No lease under Section 65-A hereof may be granted until after the completion of the said inventory.



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"The sustainable management and utilization of prawn farms and fishponds shall be in accordance with the effluent standards, pollution charges and other pollution control measures such as, but not limited to, the quantity of fertilizers, pesticides and other chemicals used, that may be established by the Fertilizer and Pesticide Authority (FPA), the Environmental Management Bureau (EMB), and other appropriate government regulatory bodies, and existing regulations governing water utilization, primarily Presidential Decree No. 1067, entitled "A Decree Instituting A Water Code, Thereby Revising and Consolidating the Laws Governing the Ownership, Appropriation, Utilization, Exploitation, Development, Conservation and Protection of Water Resources."

"SECTION 65-C. *Protection of Mangrove Areas.* - In existing Fishpond Lease Agreements (FLAs) and those that will be issued after the effectivity of this Act, a portion of the fishpond area fronting the sea, sufficient to protect the environment, shall be established as a buffer zone and be planted to specified mangrove species to be determined in consultation with the regional office of the DENR. The Secretary of Environment and Natural Resources shall provide the penalties for any violation of this undertaking as well as the rules for its implementation."

"SECTION 65-D. *Change of Crops.* - The change of crops to commercial crops or high value crops shall not be considered as a conversion in the use or nature of the land. The change in crop should however, not prejudice the rights of tenants or leaseholders should there be any and the consent of a simple and absolute majority of the affected farm workers, if any, shall first be obtained."

SEC. 6. There shall be incorporated after Section 73 of Republic Act No. 6657 a new section to read as follows:

"SECTION 73-A. *Exception.* - The provisions of Section 73, paragraph (E), to the contrary notwithstanding, the sale and/or transfer of agricultural land in cases where such sale, transfer or conveyance is made necessary as a result of a bank's foreclosure of the mortgaged land is hereby permitted."

SEC. 7. *Separability Clause.* - If, for any reason, any section or provision of this Act is declared null and void, no other section, provision, or part thereof shall be affected and the same shall remain in full force and effect.

SEC. 2. Section 10 of Republic Act No. 6657 is hereby amended to read as follows:

**"SECTION 10. Exemptions and Exclusions. -**

"a) Lands actually, directly and exclusively used for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds and mangroves shall be exempt from the coverage of this Act.

"b) Private lands actually, directly and exclusively used for prawn farms and fishponds shall be exempt from the coverage of this Act: *Provided*, That said prawn farms and fishponds have not been distributed and Certificate of Land Ownership Award (CLOA) issued to agrarian reform beneficiaries under the Comprehensive Agrarian Reform Program.

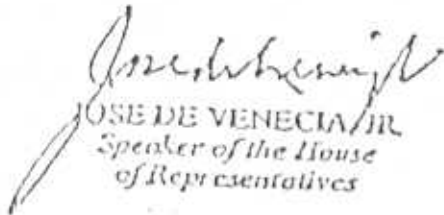
"In cases where the fishponds or prawn farms have been subjected to the Comprehensive Agrarian Reform Law, by voluntary offer to sell, or commercial farms defunct or notices of compulsory acquisition, a simple and absolute majority of the actual regular workers or tenants must consent to the exemption within one (1) year from the effectivity of this Act. When the workers or tenants do not agree to this exemption, the fishponds or prawn farms shall be distributed collectively to the worker-beneficiaries or tenants who shall form a cooperative or association to manage the same.

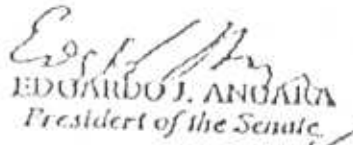
"In cases where the fishponds or prawn farms have not been subjected to the Comprehensive Agrarian Reform Law, the consent of the farm workers shall no longer be necessary, however, the provision of Section 32-A hereof on incentives shall apply."

"c) Lands actually, directly and exclusively used and found to be necessary for national defense, school sites and campuses, including experimental farm stations operated by public or private schools for educational purposes, seeds and seedlings research and pilot production center, church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers and all lands with eighteen percent (18%) slope and over, except those already developed, shall be exempt from the coverage of this Act."

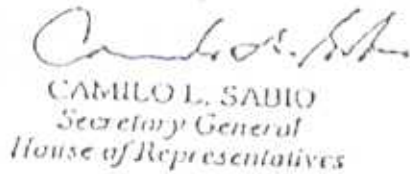
SEC. 8. *Effectivity Clause.* - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

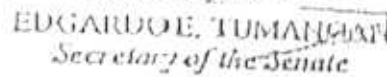
Approved,

  
JOSE DE VENECIA, JR.  
Speaker of the House  
of Representatives

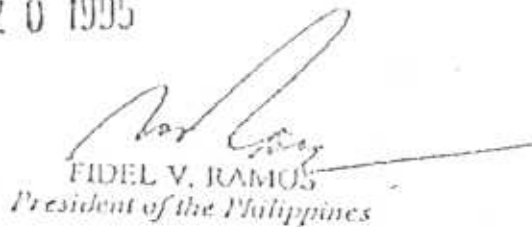
  
EDUARDO J. ANGARA  
President of the Senate

This Act, which is a consolidation of Senate Bill No. 740 and House Bill No. 918, was finally passed by the Senate and the House of Representatives on February 7, 1995 and February 8, 1995, respectively.

  
CAMILO L. SABIO  
Secretary General  
House of Representatives

  
EDGARDO E. TUMANAN  
Secretary of the Senate

Approved: FEB 20 1995

  
FIDEL V. RAMOS  
President of the Philippines