Republic of the Philippines
SUPREME COURT
Manila

EN BANC

HACIENDA LUISITA, INCORPORATED, Petitioner,	**G.R. No. 171101**
	Present:
LUISITA INDUSTRIAL PARK CORPORATION and RIZAL COMMERCIAL BANKING CORPORATION, Petitioners-in-Intervention,	CORONA, *C.J.*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, BRION,
- versus -	PERALTA, BERSAMIN,
PRESIDENTIAL AGRARIAN REFORM COUNCIL; SECRETARY NASSER PANGANDAMAN OF THE DEPARTMENT OF AGRARIAN REFORM; ALYANSA NG MGA MANGGAGAWANG BUKID NG HACIENDA LUISITA, RENE GALANG, NOEL MALLARI, and JULIO SUNIGA[1] and his SUPERVISORY GROUP OF THE HACIENDA LUISITA, INC. and WINDSOR ANDAYA, Respondents.	DEL CASTILLO, ABAD, VILLARAMA, JR., PEREZ, MENDOZA, and SERENO, *JJ*. Promulgated: _____

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D E C I S I O N

VELASCO, JR., *J.*:

"Land for the landless," a shibboleth the landed gentry doubtless has received with much misgiving, if not resistance, even if only the number of agrarian suits filed serves to be the norm. Through the years, this battle cry and root of discord continues to reflect the seemingly ceaseless discourse on, and great disparity in, the distribution of land among the people,

[1] "Jose Julio Zuniga" in some parts of the records.

"dramatizing the increasingly urgent demand of the dispossessed x x x for a plot of earth as their place in the sun."[2] As administrations and political alignments change, policies advanced, and agrarian reform laws enacted, the latest being what is considered a comprehensive piece, the face of land reform varies and is masked in myriads of ways. The stated goal, however, remains the same: clear the way for the true freedom of the farmer.[3]

Land reform, or the broader term "agrarian reform," has been a government policy even before the Commonwealth era. In fact, at the onset of the American regime, initial steps toward land reform were already taken to address social unrest.[4] Then, under the 1935 Constitution, specific provisions on social justice and expropriation of landed estates for distribution to tenants as a solution to land ownership and tenancy issues were incorporated.

In 1955, the Land Reform Act (Republic Act No. [RA] 1400) was passed, setting in motion the expropriation of all tenanted estates.[5]

On August 8, 1963, the Agricultural Land Reform Code (RA 3844) was enacted,[6] abolishing share tenancy and converting all instances of share tenancy into leasehold tenancy.[7] RA 3844 created the Land Bank of the Philippines (LBP) to provide support in all phases of agrarian reform.

As its major thrust, RA 3844 aimed to create a system of owner-cultivatorship in rice and corn, supposedly to be accomplished by expropriating lands in excess of 75 hectares for their eventual resale to tenants. The law, however, had this restricting feature: its operations were

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[2] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No 78742, July 14, 1989, 175 SCRA 343, 352.

[3] Id. at 392.

[4] Yujiro Hayami, et al., TOWARD AN ALTERNATIVE LAND REFORM PARADIGM: A PHILIPPINE PERSPECTIVE 53 (1990).

[5] Id.

[6] Bureau of Agrarian Reform Information and Education (BARIE) & Communications Development Division (CDD), AGRARIAN REFORM HISTORY 19 (2006).

[7] *Salmorin v. Zaldivar*, G.R. No. 169691, July 23, 2008, 559 SCRA 564, 572.

confined mainly to areas in Central Luzon, and its implementation at any level of intensity limited to the pilot project in Nueva Ecija.[8]

Subsequently, Congress passed the Code of Agrarian Reform (RA 6389) declaring the entire country a land reform area, and providing for the automatic conversion of tenancy to leasehold tenancy in all areas. From 75 hectares, the retention limit was cut down to seven hectares.[9]

Barely a month after declaring martial law in September 1972, then President Ferdinand Marcos issued Presidential Decree No. 27 (PD 27) for the "emancipation of the tiller from the bondage of the soil."[10] Based on this issuance, tenant-farmers, depending on the size of the landholding worked on, can either purchase the land they tilled or shift from share to fixed-rent leasehold tenancy.[11] While touted as "revolutionary," the scope of the agrarian reform program PD 27 enunciated covered only tenanted, privately-owned rice and corn lands.[12]

Then came the revolutionary government of then President Corazon C. Aquino and the drafting and eventual ratification of the 1987 Constitution. Its provisions foreshadowed the establishment of a legal framework for the formulation of an expansive approach to land reform, affecting all agricultural lands and covering both tenant-farmers and regular farmworkers.[13]

So it was that Proclamation No. 131, Series of 1987, was issued instituting a comprehensive agrarian reform program (CARP) to cover all agricultural lands, regardless of tenurial arrangement and commodity produced, as provided in the Constitution.

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[8] Yujiro Hayami, et al., supra note 4, at 57.
[9] Id.
[10] Id.
[11] Id. at 60; BARIE & CDD, supra note 6, at 21.
[12] BARIE & CDD, supra note 6, at 22.
[13] Yujiro Hayami, et al., supra note 4, at 71.

On July 22, 1987, Executive Order No. 229 (EO 229) was issued providing, as its title[14] indicates, the mechanisms for CARP implementation. It created the Presidential Agrarian Reform Council (PARC) as the highest policy-making body that formulates all policies, rules, and regulations necessary for the implementation of CARP.

On June 15, 1988, RA 6657 or the *Comprehensive Agrarian Reform Law of 1988*, also known as CARL or the CARP Law, took effect, ushering in a new process of land classification, acquisition, and distribution. As to be expected, RA 6657 met stiff opposition, its validity or some of its provisions challenged at every possible turn. *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*[15] stated the observation that the assault was inevitable, the CARP being an untried and untested project, "an experiment [even], as all life is an experiment," the Court said, borrowing from Justice Holmes.

The Case

In this Petition for Certiorari and Prohibition under Rule 65 with prayer for preliminary injunctive relief, petitioner Hacienda Luisita, Inc. (HLI) assails and seeks to set aside PARC Resolution No. 2005-32-01[16] and Resolution No. 2006-34-01[17] issued on December 22, 2005 and May 3, 2006, respectively, as well as the implementing Notice of Coverage dated January 2, 2006 (Notice of Coverage).[18]

The Facts

At the core of the case is Hacienda Luisita de Tarlac (Hacienda Luisita), once a 6,443-hectare mixed agricultural-industrial-residential

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[14] Providing the Mechanism for the Implementation of the Comprehensive Agrarian Reform Program.
[15] Supra note 2.
[16] *Rollo*, pp. 100-101.
[17] Id. at 782-800.
[18] Id. at 103-106.

expanse straddling several municipalities of Tarlac and owned by Compañia General de Tabacos de Filipinas (Tabacalera). In 1957, the Spanish owners of Tabacalera offered to sell Hacienda Luisita as well as their controlling interest in the sugar mill within the hacienda, the Central Azucarera de Tarlac (CAT), as an indivisible transaction. The Tarlac Development Corporation (Tadeco), then owned and/or controlled by the Jose Cojuangco, Sr. Group, was willing to buy. As agreed upon, Tadeco undertook to pay the purchase price for Hacienda Luisita in pesos, while that for the controlling interest in CAT, in US dollars.[19]

To facilitate the adverted sale-and-purchase package, the Philippine government, through the then Central Bank of the Philippines, assisted the buyer to obtain a dollar loan from a US bank.[20] Also, the Government Service Insurance System (GSIS) Board of Trustees extended on November 27, 1957 a PhP 5.911 million loan in favor of Tadeco to pay the peso price component of the sale. One of the conditions contained in the approving GSIS Resolution No. 3203, as later amended by Resolution No. 356, Series of 1958, reads as follows:

> That the lots comprising the Hacienda Luisita shall be subdivided by the applicant-corporation and sold at cost to the tenants, should there be any, and whenever conditions should exist warranting such action under the provisions of the Land Tenure Act;[21]

As of March 31, 1958, Tadeco had fully paid the purchase price for the acquisition of Hacienda Luisita and Tabacalera's interest in CAT.[22]

The details of the events that happened next involving the hacienda and the political color some of the parties embossed are of minimal significance to this narration and need no belaboring. Suffice it to state that on May 7, 1980, the martial law administration filed a suit before the Manila Regional Trial Court (RTC) against Tadeco, et al., for them to surrender

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[19] Id. at 3644, Memorandum of HLI.
[20] Id. at 3809, Memorandum of Farmworkers Agrarian Reform Movement, Inc. (FARM).
[21] Id. at 3645-3646, Memorandum of HLI.
[22] Id. at 3645.

Hacienda Luisita to the then Ministry of Agrarian Reform (MAR, now the Department of Agrarian Reform [DAR]) so that the land can be distributed to farmers at cost. Responding, Tadeco or its owners alleged that Hacienda Luisita does not have tenants, besides which sugar lands—of which the hacienda consisted—are not covered by existing agrarian reform legislations. As perceived then, the government commenced the case against Tadeco as a political message to the family of the late Benigno Aquino, Jr.[23]

Eventually, the Manila RTC rendered judgment ordering Tadeco to surrender Hacienda Luisita to the MAR. Therefrom, Tadeco appealed to the Court of Appeals (CA).

On March 17, 1988, the Office of the Solicitor General (OSG) moved to withdraw the government's case against Tadeco, et al. By Resolution of May 18, 1988, the CA dismissed the case the Marcos government initially instituted and won against Tadeco, et al. The dismissal action was, however, made subject to the obtention by Tadeco of the PARC's approval of a stock distribution plan (SDP) that must initially be implemented after such approval shall have been secured.[24] The appellate court wrote:

> The defendants-appellants x x x filed a motion on April 13, 1988 joining the x x x governmental agencies concerned in moving for the dismissal of the case subject, however, to the following conditions embodied in the letter dated April 8, 1988 (Annex 2) of the Secretary of the [DAR] quoted, as follows:
>
> > 1. Should TADECO fail to obtain approval of the stock distribution plan for failure to comply with all the requirements for corporate landowners set forth in the guidelines issued by the [PARC]: or
> >
> > 2. If such stock distribution plan is approved by PARC, but TADECO fails to initially implement it.
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> > x x x x
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> WHEREFORE, the present case on appeal is hereby dismissed without prejudice, and should be revived if any of the conditions as above set forth is not duly complied with by the TADECO.[25]

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[23] Id. at 3810, Memorandum of FARM.
[24] Id. at 3811.
[25] Id. at 3651, Memorandum of HLI.

Markedly, Section 10 of EO 229[26] allows corporate landowners, as an alternative to the actual land transfer scheme of CARP, to give qualified beneficiaries the right to purchase shares of stocks of the corporation under a stock ownership arrangement and/or land-to-share ratio.

Like EO 229, RA 6657, under the latter's Sec. 31, also provides two (2) alternative modalities, i.e., land or stock transfer, pursuant to either of which the corporate landowner can comply with CARP, but subject to well-defined conditions and timeline requirements. Sec. 31 of RA 6657 provides:

> SEC. 31. *Corporate Landowners.*—Corporate landowners may voluntarily transfer ownership over their agricultural landholdings to the Republic of the Philippines pursuant to Section 20 hereof or to qualified beneficiaries x x x.
>
> Upon certification by the DAR, corporations owning agricultural lands **may give their qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets**, under such terms and conditions as may be agreed upon by them. In no case shall the compensation received by the workers at the time the shares of stocks are distributed be reduced. x x x
>
> Corporations or associations which voluntarily divest a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries under this section shall be deemed to have complied with the provisions of this Act: Provided, That the following conditions are complied with:
>
> (a) In order to safeguard the right of beneficiaries who own shares of stocks to dividends and other financial benefits, the books of the corporation or association shall be subject to periodic audit by certified public accountants chosen by the beneficiaries;
>
> (b) Irrespective of the value of their equity in the corporation or association, the beneficiaries shall be assured of at least one (1) representative in the board of directors, or in a management or executive committee, if one exists, of the corporation or association;
>
> (c) Any shares acquired by such workers and beneficiaries shall have the same rights and features as all other shares; and

[26] SECTION 10. Corporate Landowners. Corporate landowners may give their workers and other qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the land assets bear in relation to the corporation's total assets, and grant additional compensation which may be used for this purposes. The approval by the PARC of a plan for such stock distribution, and its initial implementation, shall be deemed compliance with the land distribution requirements of the CARP.

> (d) Any transfer of shares of stocks by the original beneficiaries shall be void *ab initio* unless said transaction is in favor of a qualified and registered beneficiary within the same corporation.
>
> If within two (2) years from the approval of this Act, the [voluntary] land or stock transfer envisioned above is not made or realized or the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act. (Emphasis added.)

Vis-à-vis the stock distribution aspect of the aforequoted Sec. 31, DAR issued Administrative Order No. 10, Series of 1988 (DAO 10),[27]

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[27] **Section 1.**

1a.) ***Qualified Corporate Landowner-Applicant***—All *bona fide* stock corporations owning agricultural land utilized for agricultural production and existing as such as of June 15, 1988, the date of effectivity of R.A. No. 6657, may apply for and avail of the voluntary stock distribution plan [SDP] provided in Section 31 thereof. New corporations incorporated after the effectivity of R.A. No. 6657 may also apply, provided that they are subsidiaries of or spin-offs from their mother corporation x x x.

1b.) ***Qualified Beneficiaries***—The qualified beneficiaries in the [SDP] are all those identified beneficiaries of land transfer enumerated under Section 22 of RA 6657.

The [SDP] shall be agreed upon by both the corporate landowner-applicant and the qualified beneficiaries and subject to approval by PARC. x x x

Section 2. ***Applicant and Time of Filing***—The corporate landowner-applicant shall file the [SDP] in a form to be prescribed by DAR and obtain approval within two (2) years from the effectivity of RA 6657 but prior to DAR's notice of compulsory acquisition of said property under the same law.

Section 3. ***Proportion of Distribution***—The [SDP] of corporate landowner-applicant must give the qualified beneficiaries the right to purchase at least such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the corporation's total assets under such terms and conditions as may be agreed upon by them.

Section 4. ***Stock Distribution Plan***—The [SDP] submitted by the corporate landowner-applicant shall provide for the distribution of an equal number of shares of stock of the same class and value, with the same rights and features as all other shares, to each of the qualified beneficiaries. This distribution plan in all cases, shall be at least the minimum ratio for purposes of compliance with Section 31 of RA 6657.

On top of the minimum ratio provided under Section 3 of this Implementing Guideline, corporate landowner-applicant may adopt additional stock distribution schemes taking into account factors such as rank, seniority, salary, position and other circumstances which may be deemed desirable as a matter of sound company policy.

Section 5. ***Criteria for Evaluation of Proposal***—The [SDP] submitted by the corporate landowner-applicant shall meet the following minimum criteria:

a. that the continued operation of the corporation with its agricultural land intact and unfragmented is viable with potential for growth and increased profitability;

b. that the plan for stock distribution to qualified beneficiaries would result in increased income and greater benefits to them, than if the lands were divided and distributed to them individually;

c. that the stock distribution plan is acceptable to a majority, defined as 50% plus 1, of all the qualified beneficiaries;

d. that the plan shall include a provision that the books of the corporation shall be subject to periodic audit by certified public accountants chosen by the beneficiaries;

e. that irrespective of the value of the beneficiaries equity in the corporation, they shall be assured of at least one (1) representative in the Board of Directors or in a management or executive committee, if one exists x x x;

f. that a beneficiary who avails of a stock option must first execute the necessary waiver from being a beneficiary in another stock distribution plan x x x;

g. other criteria that the DAR may prescribe x x x.

Section 6. ***Valuation and Compensation***—The valuation of corporate assets submitted by the corporate landowner-applicant in this proposal shall be subject to verification and audit examination by DAR. The determination of the value of the agricultural land shall be based on the land valuation guidelines promulgated by DAR.

Section 7. ***Modes of Stock Distribution***—The [SDP] x x x may be effected through divestment of the existing equity holdings by stockholders or other modes of stock distribution acceptable to both parties and duly approved by DAR.

entitled *Guidelines and Procedures for Corporate Landowners Desiring to Avail Themselves of the Stock Distribution Plan under Section 31 of RA 6657*.

From the start, the stock distribution scheme appeared to be Tadeco's preferred option, for, on August 23, 1988,[28] it organized a spin-off corporation, HLI, as vehicle to facilitate stock acquisition by the farmworkers. For this purpose, Tadeco assigned and conveyed to HLI the agricultural land portion (4,915.75 hectares) and other farm-related properties of Hacienda Luisita in exchange for HLI shares of stock.[29]

Pedro Cojuangco, Josephine C. Reyes, Teresita C. Lopa, Jose Cojuangco, Jr., and Paz C. Teopaco were the incorporators of HLI.[30]

To accommodate the assets transfer from Tadeco to HLI, the latter, with the Securities and Exchange Commission's (SEC's) approval, increased its capital stock on May 10, 1989 from PhP 1,500,000 divided into 1,500,000 shares with a par value of PhP 1/share to PhP 400,000,000 divided into 400,000,000 shares also with par value of PhP 1/share,

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Section 8. Limited Transferability of Beneficiaries Stocks x x x.

Section 9. Payment of Shares – The payment of the purchase price of the shares shall be under such terms and conditions agreed upon by the corporate landowner-applicant and the beneficiaries, provided that in no case shall the compensation received by the workers, at the time the shares of stock are distributed, be reduced.

Section 10. ***Disposition of Proposal***—After the evaluation of the [SDP] submitted by the corporate landowner-applicant to the [DAR] Secretary, he shall forward the same with all the supporting documents to the Presidential Agrarian Reform Council (PARC), through its Executive Committee, with his recommendation for final action.

Section 11. ***Implementation / Monitoring of Plan***—The approved [SDP] shall be implemented within three (3) months from receipt by the corporate landowner-applicant of the approval thereof by the PARC and the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded in the stock and transfer books and submitted to the Securities and Exchange Commission (SEC) within sixty (60) days from the said implementation of the [SDP].

Upon completion, the corporate landowner-applicant shall be issued a Certificate of Compliance. The [DAR] Secretary x x x shall strictly monitor the implementation to determine whether or not there has been compliance with the approved [SDP] as well as the requirements of the CARP. For this purpose, the corporate landowner-applicant shall make available its premises for ocular inspection, its personnel for interview, and its records for examination at normal business hours.

Section 12. Non-compliance with any of the requirements of Section 31 of RA 6675, as implemented by this Implementing Guidelines shall be grounds for the revocation of the Certificate of Compliance issued to the corporate landowner-applicant.

Section 13. Nothing herein shall be construed as precluding the PARC from making its own independent evaluation and assessment of the stock distribution plan x x x and in prescribing other requirements.

[28] *Rollo*, p. 386.

[29] Id. at 148.

[30] Id. at 3767.

150,000,000 of which were to be issued only to qualified and registered beneficiaries of the CARP, and the remaining 250,000,000 to any stockholder of the corporation.[31]

As appearing in its proposed SDP, the properties and assets of Tadeco contributed to the capital stock of HLI, as appraised and approved by the SEC, have an aggregate value of PhP 590,554,220, or after deducting the total liabilities of the farm amounting to PhP 235,422,758, a net value of PhP 355,531,462. This translated to 355,531,462 shares with a par value of PhP 1/share.[32]

On May 9, 1989, some 93% of the then farmworker-beneficiaries (FWBs) complement of Hacienda Luisita signified in a referendum their acceptance of the proposed HLI's Stock Distribution Option Plan. On May 11, 1989, the Stock Distribution Option Agreement (SDOA), styled as a Memorandum of Agreement (MOA),[33] was entered into by Tadeco, HLI, and the 5,848 qualified FWBs[34] and attested to by then DAR Secretary Philip Juico. The SDOA embodied the basis and mechanics of the SDP, which would eventually be submitted to the PARC for approval. In the SDOA, the parties agreed to the following:

> 1. The percentage of the value of the agricultural land of Hacienda Luisita (P196,630,000.00) in relation to the total assets (P590,554,220.00) transferred and conveyed to the SECOND PARTY [HLI] is 33.296% that, under the law, is the proportion of the outstanding capital stock of the SECOND PARTY, which is P355,531,462.00 or 355,531,462 shares with a par value of P1.00 per share, that has to be distributed to the THIRD PARTY [FWBs] under the stock distribution plan, the said 33.296% thereof being P118,391,976.85 or **118,391,976.85 shares**.
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> 2. The qualified beneficiaries of the stock distribution plan shall be the farmworkers who appear in the annual payroll, inclusive of the permanent and seasonal employees, who are regularly or periodically employed by the SECOND PARTY.

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[31] Id. at 1318-1319.
[32] Id. at 3736-3740.
[33] Id. at 147-150.
[34] Id. at 3746. The figure is lifted from "A Proposal for Stock Distribution under CARP"; Memorandum of HLI, Annex "A."

> 3. At the end of each fiscal year, for a **period of 30 years**, the SECOND PARTY shall arrange with the FIRST PARTY [Tadeco] the **acquisition and distribution** to the THIRD PARTY on the basis of number of days worked and at no cost to them of one-thirtieth (1/30) of 118,391,976.85 shares of the capital stock of the SECOND PARTY that are presently owned and held by the FIRST PARTY, until such time as the entire block of 118,391,976.85 shares shall have been completely acquired and distributed to the THIRD PARTY.
>
> 4.The SECOND PARTY shall guarantee to the qualified beneficiaries of the [SDP] that every year they will receive on top of their regular compensation, an amount that approximates the equivalent of three (3%) of the total gross sales from the production of the agricultural land, whether it be in the form of cash dividends or incentive bonuses or both.
>
> 5. Even if only a part or fraction of the shares earmarked for distribution will have been acquired from the FIRST PARTY and distributed to the THIRD PARTY, FIRST PARTY shall execute at the beginning of each fiscal year an irrevocable proxy, valid and effective for one (1) year, in favor of the farmworkers appearing as shareholders of the SECOND PARTY at the start of said year which will empower the THIRD PARTY or their representative to vote in stockholders' and board of directors' meetings of the SECOND PARTY convened during the year the entire 33.296% of the outstanding capital stock of the SECOND PARTY earmarked for distribution and thus be able to gain such number of seats in the board of directors of the SECOND PARTY that the whole 33.296% of the shares subject to distribution will be entitled to.
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> 6. In addition, the SECOND PARTY shall within a reasonable time subdivide and allocate for free and without charge among the qualified family-beneficiaries residing in the place where the agricultural land is situated, residential or homelots of not more than 240 sq.m. each, with each family-beneficiary being assured of receiving and owning a homelot in the barangay where it actually resides on the date of the execution of this Agreement.
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> 7. This Agreement is entered into by the parties in the spirit of the (C.A.R.P.) of the government and with the supervision of the [DAR], with the end in view of improving the lot of the qualified beneficiaries of the [SDP] and obtaining for them greater benefits. (Emphasis added.)

As may be gleaned from the SDOA, included as part of the distribution plan are: (a) production-sharing equivalent to three percent (3%) of gross sales from the production of the agricultural land payable to the FWBs in cash dividends or incentive bonus; and (b) distribution of free homelots of not more than 240 square meters each to family-beneficiaries. The production-sharing, as the SDP indicated, is payable "**irrespective of whether [HLI] makes money or not**," implying that the benefits do not partake the nature of dividends, as the term is ordinarily understood under corporation law.

While a little bit hard to follow, given that, during the period material, the assigned value of the agricultural land in the hacienda was PhP 196.63 million, while the total assets of HLI was PhP 590.55 million with net assets of PhP 355.53 million, Tadeco/HLI would admit that the ratio of the land-to-shares of stock corresponds to **33.3%** of the outstanding capital stock of the HLI equivalent to **118,391,976.85 shares** of stock with a par value of PhP 1/share.

Subsequently, HLI submitted to DAR its SDP, designated as "Proposal for Stock Distribution under C.A.R.P.,"[35] which was substantially based on the SDOA.

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[35] Id. at 3730-3748.

A PROPOSAL FOR STOCK DISTRIBUTION UNDER C.A.R.P.

Tarlac Development Corporation, [Tadeco] engaged principally in agricultural pursuits, proposes to comply with the Comprehensive Agrarian Reform Program (C.A.R.P.) x x x with [regard] to its farm x x x "Hacienda Luisita" by availing of Section 31 of [RA] 6657 which allows a corporate landowner to choose between physically dividing its agricultural land subject to agrarian reform among its farmworkers and adopting a plan of distribution to the same beneficiaries of the shares of the capital stock of the corporation owning the agricultural land.

In view of the fact that the portions of Hacienda Luisita devoted to agriculture, consisting of approximately 4,915.75 hectares, if divided and distributed among more or less 7,000 farmworkers as potential beneficiaries, would not be adequate to give the said farmhands a decent means of livelihood, [Tadeco] has decided to resort to the distribution of shares to the qualified beneficiaries as the better and more equitable mode of compliance with the C.A.R.P.

One of the important businesses of [Tadeco] was to operate Hacienda Luisita which is a sugarcane farm, the agricultural parts of which x x x have an aggregate area of about 4,915.75 hectares.

Prior to 1981, [Tadeco] operated the said farm x x x manually. The only mechanized portion of the operation then was the preparation of the land. Under this system of cultivation, production was so exiguous that the yield per hectare was even below the break-even point. To survive the crippling economic crisis begotten by the depressed price of sugar [Tadeco] began introducing in Hacienda Luisita in 1981 new technology in sugarcane farming by way of mechanization. The size and contiguous nature of the land made the mechanized approach ideal. Its intention was not to cut cost thru labor displacement but to take advantage of the better productivity level accruing to this type of operation.

In no time at all, x x x the yield per hectare almost doubled and went up to 80 tons. And what was before a marginal operation became a viable one.

FARMWORKER-BENEFICIARIES

Hacienda Luisita, as an agricultural enterprise, employs at the moment 6,296 farmworkers, excluding those whose names have been dropped from the list for not having worked in the farm for the past two years. Its labor complement consists of 337 permanent farmworkers, 275 seasonal, 3,807 casuals who are master list members and 1,877 casuals who are non-master list members, although it actually needs only 4,047 of them to run the farm.

Since its acquisition of Hacienda Luisita in 1958, [Tadeco] has never resorted to retrenchment in personnel even during extremely difficult times x x x, which saw the sugar industry on the brink of collapse. It has promptly complied with increases in the minimum wage law. There has been no collective bargaining negotiation that did not produce an across-the-board increase in wages for labor, so that a Hacienda Luisita worker received compensation much higher than the floor wage prescribed for the sugar industry.

For Crop Year 1987-88, [Tadeco] paid a total of P48,040,000.00 in terms of salaries and wages and fringe benefits of its employees and farmworkers in Hacienda Luisita. Among the fringe benefits

presently enjoyed by its personnel, under their existing collective bargaining agreement [CBA] with management, are the following:

1.) 100% free hospitalization and medical plan for all employees and workers, and their spouses, children and parents;

2.) Service and amelioration bonuses;

3.) Interest-free loans on education, rice and sugar, and salary and special loans;

4.) Bus fare subsidy for students who are children of employees and workers in the farm, and

5.) Retirement plan that is fully funded and non-contributory.

To be entitled to the above-mentioned benefits, a qualified worker has only to work for 37 days in one crop year.

SPIN-OFF CORPORATION

To expedite compliance with the requirements of the [CARP] on stock distribution and at the same time assure the farmworker-beneficiaries of the farm of receiving greater benefits than if the agricultural land were to be divided among them instead, [Tadeco] conceived of separating the agricultural portions of Hacienda Luisita from the rest of its business and transferring and conveying the said agricultural land and such properties, assets, equipment, rights, interests and accounts related to its operation, including liabilities, obligations and encumbrances incurred thereby, to another corporation separate and distinct, and for that purpose caused, thru its controlling stockholders, the registration and incorporation of [HLI] on August 23, 1988, as the entity to serve as the spin-off vehicle in whose favor the said properties and assets were later on to be transferred and conveyed.

Capital Structure. – To accommodate such transfer of assets, [HLI], with the approval of the [SEC], increased its authorized capital stock on May 10, 1989, from P1,500,000.00, divided into 1,500,000 shares with a par value of P1.00 per share, to P400,000,000.00, divided into 400,000,000 shares also with a par value of P1.00 per share, 150,000,000 of which issuable only to qualified and registered beneficiaries of the (C.A.R.P.) and 250,000,000, to any stockholder or stockholders of the corporation.

Valuation of Assets Transferred. – By virtue of a Deed of Assignment and Conveyance executed on March 22, 1989, [Tadeco] subscribed to P355,131,462.00 worth of shares in the increase in authorized capital stock of the spin-off corporation, [HLI], and in payment of its subscription transferred and conveyed to the latter the agricultural portions of Hacienda Luisita x x x having a total area of 4,915.7466 hectares, which are covered x x x together with such other properties, assets, equipment, rights, interests and accounts as are necessary in the operation of the agricultural land.

Such properties and assets contributed by [Tadeco] to the capital stock of [HLI], as appraised and approved by the [SEC], have an aggregate value of P590,554,220.00, but inasmuch as the conveyance of assets also involved the transfer of liabilities to the spin-off corporation, the net value left, after deducting the total liabilities of the farm amounting to P235,422,758.99, is P355,131,462.00 which is precisely the amount of [Tadeco's] subscription to the increase in capital stock of [HLI].

The total value of the properties and assets transferred and conveyed by [Tadeco] to [HLI] amounting to P590,554,220.00 may be broken down as follows:

1.)	Agricultural land, x x x totaling 4,915.7466 hectares at their fair market value of P40,000.00 per hectare ……	P196,630,000.00
2.)	Machinery and Equipment, x x x consisting of heavy equipment, [etc.] ……...	43,932,600.00
3.)	Current Assets x x x ……	162,638,993.00
4.)	Land Improvements, in the nature of roads, culverts, bridges, [etc.] ……..	31,886,300.00
5.)	Unappraised Assets, such as railroad system and equipment, x x x and construction in progress……	8,805,910.00
6.)	Long Term Note Receivable ……...	28,063,417.00
7.)	Residential Land, with a total area of 120.9234 hectares at their appraisal value of P50.00 per sq. m. ……	60,462,000.00
8.)	Land, consisting of 187 lots used for roads, railway, canals, lagoons, x x x having an aggregate area of 265.7495 hectares ……	58,135,000.00

The break down of the liabilities and obligations contracted in operating the farm land of Hacienda Luisita [totaling P235,422,758.00] and that have to be deducted from the total value of the properties and assets transferred to arrive at their net value, is hereinbelow indicated:

x x x x

The above valuations of both assets and liabilities have been given the imprimatur of the [SEC] by reason of its approval of the increase in the authorized capital stock of [HLI], the subscription to such increase of [Tadeco], and the payment by [Tadeco] of its subscription thru transfer of assets and liabilities. Consequently, the net value of the assets and properties transferred to [HLI] of P355,131,462.00, if added to the subscription of the incorporators [HLI] to the original authorized capital stock of the said corporation amounting to P400,000.00, would give us the total capital stock subscribed and outstanding of [HLI] of P355,531,462.00 which, as will be seen later on, plays an important role in determining what amount of shares of the capital stock of [HLI] may be distributed among its farmworker-beneficiaries pursuant to Section 31 of Republic Act No. 6657.

MECHANICS OF STOCK DISTRIBUTION PLAN

Under Section 31 of [RA] 6657, a corporation owning agricultural land may distribute among the qualified beneficiaries such proportion or percentage of its capital stock that the value of the agricultural land actually devoted to agricultural activities, bears in relation to the corporation's total assets. Conformably with this legal provision, [Tadeco] hereby submits for approval a stock distribution plan that envisions the following:

1.) The percentage of the value of the agricultural portions of Hacienda Luisita (P196,630,000.00) in relation to the total assets (P590,554,220.00) transferred and conveyed to the spin-off corporation, x x x is 33.3%, or to be exact, 33.296%, that in accordance with law, is the proportion of the outstanding capital stock of the corporation owning the agricultural land, which is P355,531,462.00 or 355,531,462 shares with a par value of P1.00 per share, that is proposed to be distributed to the qualified beneficiaries of the plan.

2.) The said 33.3% of the outstanding capital stock of [HLI] is P118,391,976.85 or 118,391,976.85 shares with a par value of P1.00 per share.

3.) The qualified beneficiaries of the [SDP] shall be the farmworkers who appear in the annual payroll, inclusive of the permanent and seasonal employees, who are regularly or periodically employed by [HLI] x x x.

4.) [HLI] shall arrange with [Tadeco] at the end of each fiscal year, for a period of 30 years, the acquisition and distribution to the farmworker-beneficiaries, on the basis of number of days worked during the year and at no cost to them, of one-thirtieth (1/30) of 118,391,976.85 shares of the capital stock of [HLI], equivalent to P118,391,976.85, that are presently owned and held by [Tadeco], until such time as the entire block of P118,391,976.85 shares shall have been completely acquired and distributed among the farmworker-beneficiaries.

5.) [HLI] guarantees to the qualified beneficiaries of the stock distribution plan that every year they will receive, on top of their regular compensation, an amount that approximates three (3%) percent of the total gross sales from the production of the agricultural land, whether it be in the form of cash dividends or incentive bonuses or both.

6.) Even if only a part or fraction of the shares earmarked for distribution will have been acquired from [Tadeco] and distributed among the farmworker-beneficiaries, [Tadeco] shall execute at the beginning of each fiscal year an irrevocable proxy, valid and effective for one (1) year, in favor of the farmworkers appearing as shareholders of [HLI] at the start of the said year which will empower the said farmworkers or their representative to vote in stockholders' meetings of [HLI] convened during the year the entire 33.3% of the outstanding capital stock of [HLI] earmarked for distribution and thus be able from the very beginning to gain such number of seats in the board of directors of [HLI] that the whole 33.3% of the shares subject to distribution will be entitled to.

7.) In addition, [HLI] shall within a reasonable time subdivide and allocate for free and without charge among the qualified family-beneficiaries residing in the place where the agricultural land is situated, residential or homelots of not more than 240 sq. m. each, with each family-beneficiary being assured of receiving and owning a homelot in the barrio or barangay where it actually resides.

STOCK RIGHTS AND RESTRICTIONS

As previously explained, the amendment of the articles of incorporation of [HLI] increasing its capital stock provided for the classification of its shares of stock into two types: Class "A" and Class "B" shares. Shares of stock representing the proportion of the outstanding capital stock of the said corporation to be distributed among its farmworker-beneficiaries shall constitute the Class "A" shares, while the rest of the capital stock shall become Class "B" shares or shares sans any restrictions and can be issued to any stockholder.

Class "A" shares have the same rights as the x x x Class "B" shares. But their issuance being limited to farmworker-beneficiaries only, Class "A" shares are subject to the restriction that for a period of 10 years from and after their distribution, no sale, transfer or conveyance of such shares x x x shall be valid unless it be by hereditary succession or in favor of qualified and registered beneficiaries within the same

corporation. This limitation on the transferability appears x x x in the amended articles of incorporation of [HLI] and in due time will be printed on the corresponding certificates of stock of that type of shares.

Limiting the effectivity of the restriction to 10 years finds support in Section 27 of the Republic Act No. 6657 which makes land distributed among beneficiaries under the [CARP] non-transferable for only 10 years, and since stock distribution is a lawful alternative to the fragmentation of land, the said legal provision should equally apply to a case where stock option is the choice.

ADVANTAGES OF STOCK PLAN
OVER LAND DISTRIBUTION

There are puissant reasons behind [Tadeco's] preference for stock distribution to land apportionment, and they are the following:

1.) The physical fragmentation and distribution of the agricultural segments of Hacienda Luisita, among potential farmworker-beneficiaries who number approximately 7,000 would result in each individual farmhand receiving less than a hectare of land that in no way could produce enough to enable him to lead a comfortable life;

2.) As the recipient of a parcel of agricultural land, the farmworker has to take care of injecting the necessary inputs needed by the land and shoulder the cost of production, and

3.) The farmworker incurs the obligation of paying to the government for his share of the agricultural land, although the law allows him 30 years within which to do it.

On the other hand, the stock distribution plan envisaged by [Tadeco] contemplates of:

A. Distributing the shares of stock over a number of years among the qualified beneficiaries at no cost to them;
B. Allowing the farmworker to continue to work on the land as such and receive the wages and other benefits provided for by his [CBA] with the corporate landowner;
C. Entitling him to receive dividends, whether in cash or in stock, on the shares already distributed to him and benefit from whatever appreciation in value that the said shares may gain as the corporation becomes profitable;
D. Qualifying him to become the recipient of whatever income-augmenting and benefit-improving schemes that the spin-off corporation may establish, such as the payment of the guaranteed three (3%) percent of gross sales every year and the free residential or homelots to be allotted to family beneficiaries of the plan, and
E. Keeping the agricultural land intact and unfragmented, to maintain the viability of the sugar operation involving the farm as a single unit and thus warrant to the acknowledged farmworker-beneficiaries, hand-in-hand with their acquisition of the shares of the capital stock of the corporation owning the land, a continuing and stable source of income.

Indeed, the stock distribution plan of [Tadeco] x x x has many strong points and adherence to the law is one of them.

For instance, in arranging for the acquisition by the farmworker-beneficiaries of shares of the capital stock of the corporation owning the land gratis, the corporate landowner upholds Section 9 of the Guidelines and Procedures promulgated to implement Section 31 of [RA] 6657, which prohibits the use of government funds in paying for the shares. Moreover, the plan for the free dispersal of shares will not in any way diminish the regular compensation being received by the farmworker-beneficiaries at the time of share distribution, which is proscribed by Section 31 of [RA] 6657.

IMPORTANCE TO
ECONOMIC DEVELOPMENT

Hacienda Luisita at present is the principal source of sugarcane needed by a sugar mill owned and operated by [CAT] in the area. It supplies 50% of the sugarcane requirement of the mill that has 1,850 employees and workers in its employ. Any disruption in the present operation of Hacienda Luisita which would affect its present productivity level would therefore automatically influence the operational viability of the sugar factory x x x and which, in turn, would have repercussions on the livelihood of the present employees and workers of the mill as well as the livelihood of the thousands of sugarcane planters and their families within the Tarlac sugar district being serviced by the sugar mill.

On the other hand, the well-being of the sugar mill has to be the prime concern also of the corporate owner of Hacienda Luisita, simply because it is the entity that mills and converts the sugarcane produce of the latter to a finished product. Not only that. By milling with [CAT] which has the most efficient sugar mill in the region, the corporate owner of Hacienda Luisita in effect guarantees to itself maximum recovery from its farm's sugarcane – something that is essential to its financial capability. In other words, the relationship between farm and mill is one of absolute reciprocity and interdependence. One cannot exist without the other.

The importance of the agricultural land of Hacienda Luisita staying undivided cannot be gainsaid. For it to remain lucrative, it has to be operated as a unit x x x. And on its successful operation rests the well-being of so many businesses and undertakings in the province, or in a wider perspective, in the region, that are largely dependent upon it for existence.

Notably, in a follow-up referendum the DAR conducted on October 14, 1989, 5,117 FWBs, out of 5,315 who participated, opted to receive shares in HLI. [36] One hundred thirty-two (132) chose actual land distribution.[37]

After a review of the SDP, then DAR Secretary Miriam Defensor-Santiago (Sec. Defensor-Santiago) addressed a letter dated November 6, 1989 [38] to Pedro S. Cojuangco (Cojuangco), then Tadeco president, proposing that the SDP be revised, along the following lines:

> 1. That over the implementation period of the [SDP], [Tadeco]/HLI shall ensure that there will be no dilution in the shares of stocks of individual [FWBs];
>
> 2. That a safeguard shall be provided by [Tadeco]/HLI against the dilution of the percentage shareholdings of the [FWBs], i.e., that the 33% shareholdings of the [FWBs] will be maintained at any given time;
>
> 3. That the mechanics for distributing the stocks be explicitly stated in the [MOA] signed between the [Tadeco], HLI and its [FWBs] prior to the implementation of the stock plan;

CONFORMITY OF
FARMWORKER-BENEFICIARIES

On May 11, 1989, a historic event took place in Hacienda Luisita when the representatives of [Tadeco] and [HLI] and 5,848 farmworker-beneficiaries inked their accord, in the presence of officials of the [DAR], to a [MOA] that embodies the stock distribution plan subject of this proposal. The said 5,848 farmworker-beneficiaries who gave their conformity to the agreement represent 92.9% of their entire complement which is much more than the majority (50% plus one) that the law requires.

CONCLUSION

Here is a stock distribution plan that calls for the acquisition and distribution every year, for the next 30 years, of 3,946,399.23 shares, worth P3,946,399.23, of the capital stock of the corporation owning the agricultural land among its qualified farmworker-beneficiaries at no cost to them. It also guarantees to pay to them each year the equivalent of three (3%) percent of the gross sales of the production of the land, which is about P7,320,000.00 yearly, irrespective of whether the said corporation makes money or not. It contemplates of allowing the farmworker-beneficiaries from the very start to occupy such number of seats in the board of directors of the corporate landowner as the whole number of shares of stock set aside for distribution may entitle them, so that they could have a say in forging their own destiny. And last but not least, it intends to help give the same farmworker-beneficiaries, who are qualified, adequate shelter by providing residential or homelots not exceeding 240 sq.m. each for free which they can call their own.

The above stock distribution plan is hereby submitted on the basis of all these benefits that the farmworker-beneficiaries of Hacienda Luisita will receive under its provisions in addition to their regular compensation as farmhands in the agricultural enterprise and the fringe benefits granted to them by their [CBA] with management. x x x

[36] Under DAO 10, Sec. 1b.), par. 2, "the acceptance of the [SDP] by the majority of all the qualified beneficiaries shall be binding upon all the said qualified beneficiaries within the applicant corporation."

[37] *Rollo*, p. 14.

[38] Id. at 1308-1309.

4. That the stock distribution plan provide for clear and definite terms for determining the actual number of seats to be allocated for the [FWBs] in the HLI Board;

5. That HLI provide guidelines and a timetable for the distribution of homelots to qualified [FWBs]; and

6. That the 3% cash dividends mentioned in the [SDP] be expressly provided for [in] the MOA.

In a letter-reply of November 14, 1989 to Sec. Defensor-Santiago, Tadeco/HLI explained that the proposed revisions of the SDP are already embodied in both the SDP and MOA.[39] Following that exchange, the PARC, under then Sec. Defensor-Santiago, by **Resolution No. 89-12-2**[40] dated November 21, 1989, approved the SDP of Tadeco/HLI.[41]

At the time of the SDP approval, HLI had a pool of farmworkers, numbering 6,296, more or less, composed of permanent, seasonal and casual master list/payroll and non-master list members.

From 1989 to 2005, HLI claimed to have extended the following benefits to the FWBs:

(a) 3 billion pesos (P3,000,000,000) worth of salaries, wages and fringe benefits

(b) 59 million shares of stock distributed for free to the FWBs;

(c) 150 million pesos (P150,000,000) representing 3% of the gross produce;

(d) 37.5 million pesos (P37,500,000) representing 3% from the sale of 500 hectares of converted agricultural land of Hacienda Luisita;

(e) 240-square meter homelots distributed for free;

(f) 2.4 million pesos (P2,400,000) representing 3% from the sale of 80 hectares at 80 million pesos (P80,000,000) for the SCTEX;

(g) Social service benefits, such as but not limited to free hospitalization/medical/maternity services, old age/death benefits

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[39] Id. at 1310-1313.
[40] Entitled "Resolution Approving the Stock Distribution Plan of [Tadeco]/HLI."
[41] *Rollo*, p. 151.

> and no interest bearing salary/educational loans and rice sugar accounts. [42]

Two separate groups subsequently contested this claim of HLI.

On August 15, 1995, HLI applied for the conversion of 500 hectares of land of the hacienda from agricultural to industrial use,[43] pursuant to Sec. 65 of RA 6657, providing:

> SEC. 65. *Conversion of Lands*.—After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification, or conversion of the land and its disposition: Provided, That the beneficiary shall have fully paid its obligation.

The application, according to HLI, had the backing of 5,000 or so FWBs, including respondent Rene Galang, and Jose Julio Suniga, as evidenced by the Manifesto of Support they signed and which was submitted to the DAR.[44] After the usual processing, the DAR, thru then Sec. Ernesto Garilao, approved the application on August 14, 1996, per DAR Conversion Order No. 030601074-764-(95), Series of 1996,[45] subject to payment of three percent (3%) of the gross selling price to the FWBs and to HLI's continued compliance with its undertakings under the SDP, among other conditions.

On December 13, 1996, HLI, in exchange for subscription of 12,000,000 shares of stocks of Centennary Holdings, Inc. (Centennary), ceded 300 hectares of the converted area to the latter.[46] Consequently, HLI's Transfer Certificate of Title (TCT) No. 287910[47] was canceled and TCT No.

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[42] Id. at 3667-3668.
[43] Id. at 647-650.
[44] Id. at 80, Petition of HLI; id. at 944, Consolidated Reply of HLI; id. at 1327-1328.
[45] Id. at 651-664.
[46] Id. at 1485-1487.
[47] Id. at 1483-1484.

292091[48] was issued in the name of Centennary. HLI transferred the remaining 200 hectares covered by TCT No. 287909 to Luisita Realty Corporation (LRC)[49] in two separate transactions in 1997 and 1998, both uniformly involving 100 hectares for PhP 250 million each.[50]

Centennary, a corporation with an authorized capital stock of PhP 12,100,000 divided into 12,100,000 shares and wholly-owned by HLI, had the following incorporators: Pedro Cojuangco, Josephine C. Reyes, Teresita C. Lopa, Ernesto G. Teopaco, and Bernardo R. Lahoz.

Subsequently, Centennary sold[51] the entire 300 hectares to Luisita Industrial Park Corporation (LIPCO) for PhP 750 million. The latter acquired it for the purpose of developing an industrial complex.[52] As a result, Centennary's TCT No. 292091 was canceled to be replaced by TCT No. 310986[53] in the name of LIPCO.

From the area covered by TCT No. 310986 was carved out two (2) parcels, for which two (2) separate titles were issued in the name of LIPCO, specifically: (a) TCT No. 365800[54] and (b) TCT No. 365801,[55] covering 180 and four hectares, respectively. TCT No. 310986 was, accordingly, partially canceled.

Later on, in a Deed of Absolute Assignment dated November 25, 2004, LIPCO transferred the parcels covered by its TCT Nos. 365800 and 365801 to the Rizal Commercial Banking Corporation (RCBC) by way of *dacion en pago* in payment of LIPCO's PhP 431,695,732.10 loan obligations. LIPCO's titles were canceled and new ones, TCT Nos. 391051 and 391052, were issued to RCBC.

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[48] Id. at 1492-1493.
[49] Id. at 1362.
[50] Id. at 3669.
[51] Id. at 1499-1509, via a Deed of Sale dated July 30, 1998.
[52] Id. at 1362.
[53] Id. at 1514-1518.
[54] Id. at 1519-1520.
[55] Id. at 1521-1522.

Apart from the 500 hectares alluded to, another 80.51 hectares were later detached from the area coverage of Hacienda Luisita which had been acquired by the government as part of the Subic-Clark-Tarlac Expressway (SCTEX) complex. In absolute terms, 4,335.75 hectares remained of the original 4,915 hectares Tadeco ceded to HLI.[56]

Such, in short, was the state of things when two separate petitions, both undated, reached the DAR in the latter part of 2003. In the first, denominated as Petition/Protest,[57] respondents Jose Julio Suniga and Windsor Andaya, identifying themselves as head of the Supervisory Group of HLI (Supervisory Group), and 60 other supervisors sought to revoke the SDOA, alleging that HLI had failed to give them their dividends and the one percent (1%) share in gross sales, as well as the thirty-three percent (33%) share in the proceeds of the sale of the converted 500 hectares of land. They further claimed that their lives have not improved contrary to the promise and rationale for the adoption of the SDOA. They also cited violations by HLI of the SDOA's terms.[58] They prayed for a renegotiation of the SDOA, or, in the alternative, its revocation.

Revocation and nullification of the SDOA and the distribution of the lands in the hacienda were the call in the second petition, styled as *Petisyon* (Petition).[59] The *Petisyon* was ostensibly filed on December 4, 2003 by *Alyansa ng mga Manggagawang Bukid ng Hacienda Luisita* (AMBALA), where the handwritten name of respondents Rene Galang as "Pangulo AMBALA" and Noel Mallari as "Sec-Gen. AMBALA"[60] appeared. As alleged, the petition was filed on behalf of AMBALA's members purportedly composing about 80% of the 5,339 FWBs of Hacienda Luisita.

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[56] TSN, August 18, 2010, pp. 153-155.
[57] *Rollo*, pp. 153-158, signed by 62 individuals.
[58] Id. at 546.
[59] Id. at 175-183.
[60] Id. at 442, Mallari's Comment to Petition. Mallari would, per his account, breakaway from AMBALA to form, with ex-AMBALA members, Farmers Agrarian Reform Movement, Inc. or FARM.

HLI would eventually answer[61] the petition/protest of the Supervisory Group. On the other hand, HLI's answer[62] to the AMBALA petition was contained in its letter dated January 21, 2005 also filed with DAR.

Meanwhile, the DAR constituted a Special Task Force to attend to issues relating to the SDP of HLI. Among other duties, the Special Task Force was mandated to review the terms and conditions of the SDOA and PARC Resolution No. 89-12-2 relative to HLI's SDP; evaluate HLI's compliance reports; evaluate the merits of the petitions for the revocation of the SDP; conduct ocular inspections or field investigations; and recommend appropriate remedial measures for approval of the Secretary.[63]

After investigation and evaluation, the Special Task Force submitted its "Terminal Report: Hacienda Luisita, Incorporated (HLI) Stock Distribution Plan (SDP) Conflict"[64] dated September 22, 2005 (Terminal

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[61] Id. at 159-174.
[62] Id. at 184-192.
[63] Id. at 679-680.
[64] Id. at 386-405. The following are the pertinent findings of the Special Task Force as stated in its Terminal Report:

IV. IDENTIFICATION OF THE PROBLEMS/ISSUES/CONCERNS:

Matrix on the Comparative Views of the Farmer Groups vis-à-vis those of HLI Management, Along With the Corresponding FGD/OCI. Results was prepared and the compliance reports submitted, the petitions of the FWBs, particularly the AMBALA and the Supervisory Group, together with the respective responses to said petitions by HLI management and the FGD/OCI results were utilized to make a comparative summary, exemplified hereunder.

1. INDIVIDUAL ISSUES RAISED BY THE *SUPERVISORY GROUP* OF HACIENDA LUISITA INCORPORATED *VIS-Á-VIS* REJOINDER OF HLI AND OBSERVATION OF TF.

1.1. Issue: Non-enjoyment of the rights and privileges that were supposed to be given to the FWBs as stated in the [MOA] prompted the supervisory group to claim for the "one percent (1%)" share from the HLI representing their share as supervisors during the transition period.

- **HLI management:** Such claim is a total misapprehension of *Section 32 of R.A. No. 6657*, the last paragraph of which requires the payment of 1% of the gross sale to managerial, supervisory and technical workers at the time of the effectivity of *R.A. No. 6657*. There were no such managerial employees and supervisors engaged in temporarily managing and supervising the operation of the land until its final turnover to the farmworkers since there was no land to transfer in the first place.

- **The Task Force position:** That Section 32 of R.A. No. 6657 may not directly apply to the instant case but the non-realization of the said 1% share of expectation in the gross sale is a cause of disenchantment. The claim for the 1% share is not included in the MOA. x x x

1.2. Issue: **Non-receipt of the 10% dividend**

- HLI contends that the distribution of said dividend does not apply to corporate farms like HLI which opted for the SD Plan.

- **Task force finding:** The FWBs do not receive such financial return despite the stipulation on the matter.

1.3. Issue: **On the three percent (3%) out of the thirty three percent (33%) representing the equity shares given from the proceeds of the sale of the 500 hectares (converted to non-agricultural use).**

- The **HLI management** argues that the corporation, banking on the legal fiction of separate corporate existence, is not obliged to give 33% of the **gross selling price** of the land since the legal owner is the corporation itself and not the stockholders. And the 3% was given by the HLI merely as a bonus for the FWBs.

- **The Task Force position:** Though, allegedly, the supervisory group receives the 3% gross production share and that others alleged that they received 30 million pesos still others maintain that they have not received anything yet. Item No. 4 of the MOA is clear and must be followed. There is a distinction between the **total gross sales** from the **production of the land** and the **proceeds** from the **sale of the land**. The former refers to the fruits/yield of the agricultural land while the latter is the land itself. The phrase "the beneficiaries are entitled every year to an amount approximately equivalent to 3% would only be feasible if the subject is the produce since there is at least one harvest per year, while such is not the case in the sale of the agricultural land. This negates then the claim of HLI that, all that the FWBs can be entitled to, if any, is only 3% of the purchase price of the converted land.

- Besides, the ***Conversion Order*** dated 14 August 1996 provides that "*the benefits, wages and the like, presently received by the FWBs shall not in any way be reduced or adversely affected.* ***Three percent of the gross selling price of the sale of the converted land shall be awarded to the beneficiaries of the SDO****."* The 3% gross production share then is different from the 3% proceeds of the sale of the converted land and, with more reason, the 33% share being claimed by the FWBs as part owners of the Hacienda, should have been given the FWBs, as stockholders, and to which they could have been entitled if only the land were acquired and redistributed to them under the CARP.

1.4. Issue: **Illegal conversion and financial incapability of HLI to proceed with the proposed development, thereby leaving the areas unproductive.**

- The **HLI management** contends that the **Petition for Conversion** was duly approved by the DAR on 14 August 1996 and it had the conformity of more than 5,000 FWBs who signed a manifesto of support.

- In the ***Petitions*** and/during the ***OCI/FGD*** [Ocular Inspection/Focused Group Discussion] the 500 hectares subject of conversion appear to still remain undeveloped. A clear example is the Central Techno Park which has a landscaped entrance and concrete roads but the only things which can be seen inside the premises are cogon grasslands. The FWBs further maintained that they were either not given any monetary benefit from the conversion of the 500 hectares or that they were only partially given.

2. CONCERNS MANIFESTED IN THE PETITION FILED BY THE *ALYANSA NG MGA MANGGAGAWANG BUKID NG HACIENDA LUISITA (AMBALA)* LED BY MR. RENE GALANG

2.1. Issue: **That DAR Administrative Order No. 10, series of 1988, guidelines in the corporate availment of SDO, should observe Section 31 of R.A. No. 6657 qualified beneficiaries and provide that they (FWBs) be allowed to buy the land from the company.**

The **HLI management** posits the proposition that ***Section 31*** is very clear and unambiguous. It grants to the FWBs the right to purchase shares of stocks in the corporation that owns the agricultural land itself and not the land. HLI is correct in this unless the SDP is disregarded.

2.2. Issue: **Cancellation of the SDO and immediate coverage of the area are requested as the agreements in the implementation of the SDO were allegedly not followed/complied with.**

- The HLI management warranted that subject SD Plan is the most feasible scheme/alternative vis-à-vis physical distribution of the landholding under compulsory acquisition.

- During the ***FGD/OCI***, it was represented that the terms, conditions and benefits provided for in the MOA/commitment appear not to have been substantially followed. **Hereunder, is a more detailed discussion of the issues:**

2.2.1. **<u>On the issue of non compliance with the MOA</u>**

* FWBs are supposed to receive P700-800 dividends annually.

* P800-1000 production sharing per year. The *Hacienda* is operating continuously which only proves that the *Hacienda* is earning.

- HLI, however, claims that it is not incurring profits, thus, there are no dividends to be distributed. But the shares of stocks and 3% production share have been given.

- ***FGD/OCI* finding** shows that the number of shares of stocks to be received by the FWBs, depends on their designation (*i.e.*, permanent, casual or seasonal) and on the number of **man days. Retired** and **retrenched workers** are not given shares of stocks and cease as share holders. Undisputedly, the setup under the MOA is one-sided in favor the HLI. The work schedule, upon which the extent of entitlement to be granted shares of stock is wholly within the prerogative and discretion of HLI management that a FWB can still be denied thereof by the simple expediency of not giving him any working hours/days. And this is made possible by the fact that [there] are more farmers/farmworkers in its employ than what is, according to HLI, necessary to make it operational.

2.2.2. **On the issue of representation**

- It was verified that the Board of Directors election is annually conducted. However, majority of the FWBs are no longer interested and, in fact, have boycotted the elections because of the minority representation of the FWBs (4 as against 7). They claim that they are always outnumbered and some claim that the representatives elected are pro management. x x x [N]o fruitful and harmonious corporate activities can be expected as any resistance will be counter-productive, that to continue the operation under the SDP that is challenged herein will only be an empty exercise. The farmers and farmworkers will not, under the circumstances, be able to realize the contemplated receipt of benefits under the Program.

2.2.3. **On the issue of the 240-square meter homelot**

- As to the 240 square meter homelots, not all of the FWBs were given homelots. Of those given, they complain that they still do not have the corresponding titles. And, those already given titles maintain that said documents are useless as such, for they cannot even be used as bank collaterals, despite even the lapse of the 5-year prescriptive period, because banks and other financial institutions refuse to honor the same without clearance from the HLI management. x x x

2.2.4. **On the issue of coverage of the Hacienda**

- The **HLI** contends that dividing the 4,915.75 hectares among 6,296 beneficiaries would result to a farm lot of 0.78 hectare per individual FWB, which is not an economic size farm. Differences in the physical conditions of the landholding must be considered such as soil fertility and accessibility. The question of who would get the fertile or accessible part of the land and who would receive less would result/culminate in a "battle royale" among the FWBs.

DAR has established guidelines on the matter of such allocations and no problem has been encountered in its implementation of the CARP. By and large for a whole scale cultivation and production, formation of cooperatives has proven to be an effective mechanism to address the problem. The law even encourages the use of such combination [*cf.* Section 29, (3rd par.), Rep. Act No. 6657].

2.2.5. **On the agreement that other benefits will be given other than those provided for in the MOA**

- It was stipulated that the SDO would provide the FWBs other benefits x x x a less than a hectare-farm would not be able to provide, like the 3% of the gross production sales, to be shared with the FWBs, on top of their regular compensation.

- The FWBs do not receive any other benefits under the MOA except the aforementioned [(*viz*: shares of stocks (partial), 3% gross production sale (not all) and homelots (not all)].

V. PRELIMINARY CONSIDERATIONS

1. The common issues raised by the petitioners are focused on the revocation of the existing SDO that was proposed by HLI and approved by the PARC on ground, among others that the provisions of **Section 31** of **R.A. No. 6657**, upon which the SDO/SDP was based is contrary to the basic policy of the agrarian reform program on ***Land Acquisition and Redistribution***, as may be gleaned from the second paragraph of ***Section 2 of R.A. No. 6657***, which reads:

> "*To this end, a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation, shall*

be undertaken to provide farmers and farmworkers with the opportunity to enhance their dignity and to improve the quality of their lives through greater productivity of agricultural lands." *(underscoring supplied).*

Envisioned in the foregoing provision is the physical land transfer to prospective beneficiaries as reiterated in **Section 5** thereof, as follows:

"***Schedule of Implementation***. *The distribution of all lands covered by this Act shall be implemented immediately and completed within ten (10) years from the effectivity thereof*".

2. While SDO/SDP is an alternative arrangement to the physical distribution of lands pursuant to **Section 31** of **R.A. No. 6657**, logic and reason dictate that such agreement must materialize within a specific period during the lifetime of CARP, stating clearly therein when such arrangement must end. The aforementioned provision may be considered as the provision of the law on "*suspended coverage*", parallel to the provisions of *Section 11* on *Commercial Farming* where coverage of CARP is deferred for **ten (10) years** after the effectivity of Republic Act No. 6657. Stated simply, owners of commercial farms are given a chance to recoup their investment for ten (10) years before same is finally subjected to coverage under the CARP.

VI. FINDINGS, ANALYSIS AND RECOMMENDATION:

1. Providing for the quintessence and spirit of the agrarian reform program, Republic Act No. 6657 explicitly provides:

"SECTION 2. Declaration of Principles and Policies.—It is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP). The welfare of the landless farmers and farmworkers will receive the highest consideration to promote social justice and to move the nation toward sound rural development and industrialization, and the establishment of owner cultivatorship of economic-size farms as the basis of Philippine agriculture.

To this end, a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation, shall be undertaken to provide farmers and farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands" (underscoring added).

Within the context of the foregoing policy/objective, the farmer/farmworker beneficiaries (FWBs) in agricultural land owned and operated by corporations may be granted option by the latter, with the intervention and prior certification of DAR, "x x x the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total asset x x x" (Section 31, Rep. Act NO. 6657). Toward this end, DAR issued Administrative Order No. 10, series of 1988, copy of which is attached as ***Annex "K"*** and made an integral part hereof, which requires that the stock distribution option (SDO) shall meet the following criteria, reading, *inter alia*:

"a. that the continued operation of the corporation with its agricultural land intact and unfragmented is viable, with potential for growth and increased profitability;

"b. that the plan for stock distribution to qualified beneficiaries would result in increased income and greater benefits to them, than if the lands were divided and distributed to them individually;

x x x x

And to ensure, effective and fair implementation of the contemplated Stock Distribution Plan (SDP), the said AO also provides:

"SECTION 12. *Revocation of Certificate of Compliance*—Non-compliance with any of the requirements of Section 31 of RA 6657, as implemented by these Implementing Guidelines shall be grounds for the revocation of the Certificate of Compliance issued to the corporate landowner-applicant.

SECTION 13. *Reservation Clause*—Nothing herein shall be construed as precluding the PARC from making its own independent evaluation and assessment of the

stock distribution plan of the corporate landowner-applicant and from prescribing other requirements."

Herein, however, there is yet no Certificate of Compliance issued.

The reason is simple. Despite the lapse of sixteen (16) years, from the time the SDP was approved in November 1989, by resolution of the x x x (PARC), the objective and policy of CARP, *i.e.*, acquisition and distribution (herein under the [SDP], only shares of stocks) is yet to be fully completed; the FWBs, instead of the promised/envisioned better life under the CARP (therein, as corporate owner), do still live in want, in abject poverty, highlighted by the resulting loss of lives in their vain/futile attempt to be financially restored at least to where they were before the CARP (SDP) was implemented. While they were then able to make both ends meet, with the SDP, their lives became miserable.

2. For the foregoing considerations, as further dramatized by the following violations/noncompliance with the guidelines prescribed, which are legally presumed as integrated in the agreements/accords/stipulations arrived at thereunder like the HLI SDP, namely:

2.1. Noncompliance with Section 11 of Administrative Order No. 10, Series of 1988, which provides:

> "The approved stock distribution plan shall be implemented within three (3) months from receipt by the corporate landowner-applicant of the approval thereof by the PARC and the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded in the stock and transfer books and submitted to the Securities and Exchange Commission (SEC) within sixty (60) days from the said implementation plan."

The [SDP], however, submitted a 30-year implementation period in terms of the transfer of shares of stocks to the farmworkers beneficiaries (FWBs). The MOA provides:

> "At the end of each fiscal year: for a period of 30 years, SECOND PARTY shall arrange with the FIRST PARTY the acquisition and distribution to the THIRD PARTY on the basis of the number of days worked and at no cost to them of one-thirtieth (1/30) of …"

Plainly, pending the issuance of the corresponding shares of stocks, the FWBs remain ordinary farmers and/or farmworker and the land remain under the full ownership and control of the original owner, the HLI/TADECO.

To date the issuance and transfer of the shares of stocks, together with the recording of the transfer, are yet to be complied with.

2.2. Noncompliance with the representations/warranties made under Section 5 (a) and (b) of said Administrative Order No. 10.

As claimed by HLI itself, the corporate activity has already stopped that the contemplated profitability, increased income and greater benefits enumerated in the SDP have remained mere illusions.

2.3. The agricultural land involved was not maintained "unfragmented". At least, 500 hectares hereof have been carved out after its land use has been converted to non-agricultural uses.

The **recall** of said SDP/SDO of HLI is recommended. More so, since:

1. **It is contrary to Public Policy**

Section 2 of [RA] 6657 provides that the welfare of landless farmworkers will receive the highest consideration to promote social justice. As such, the State undertake a more equitable distribution and ownership of land that shall provide farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.

In the case of Hacienda Luisita, the farmworkers alleged that the quality of their lives has not improved. In fact it even deteriorated especially with the HLI Management declaration that the company has not gained profits, in the last 15 years, that there could be no declaration and distribution of dividends.

2. The matter of issuance/distribution shares of stocks in lieu of actual distribution of the agricultural land involved, was made totally dependent on the discretion/caprice of HLI. Under the setup, the agreement is grossly onerous to the FWBs as their man days of work cannot depart from whatever management of HLI unilaterally directs.

Report), finding that HLI has not complied with its obligations under RA 6657 despite the implementation of the SDP.[65] The Terminal Report and the Special Task Force's recommendations were adopted by then DAR Sec. Nasser Pangandaman (Sec. Pangandaman).[66]

Subsequently, Sec. Pangandaman recommended to the PARC Executive Committee (Excom) (a) the recall/revocation of PARC Resolution No. 89-12-2 dated November 21, 1989 approving HLI's SDP; and (b) the acquisition of Hacienda Luisita through the compulsory acquisition scheme.

They can be denied the opportunity to be granted a share of stock by just not allowing them to work altogether under the guise of rotation. Meanwhile, within the 30-year period of bondage, they may already reach retirement or, worse, get retrenched for any reason, then, they forever lose whatever benefit he could have received as regular agrarian beneficiary under the CARP if only the SDP of HLI were not authorized and approved.

Incidentally, the FWBs did not have participation in the valuation of the agricultural land for the purpose of determining its proportionate equity in relation to the total assets of the corporation. Apparently, the sugarlands were undervalued.

3. The FWBs were misled into believing by the HLI, through its carefully worded Proposal that "x x x the stock distribution plan envisaged by [Tadeco], in effect, assured of:

> "A. Distributing the shares of stock over a numbers of years among the qualified beneficiaries at no cost to them;
>
> B. Allowing the farmworker to continue to work on the land as such and receive the wages and other benefits provided for by his collective bargaining agreement with the corporate landowner;
>
> C. Entitling him to receive dividends, whether in cash or in stock, on the shares already distributed to him and benefit from whatever appreciation in value that the said shares may gain as the corporation becomes profitable;
>
> D. Qualifying him to become the recipient of whatever income-augmenting and benefit-improving schemes that the spin-off corporation may establish, such as the payment of the guaranteed three (3%) percent of gross sales every year and the free residential or homelots to be allotted to family beneficiaries of the plan; and
>
> E. Keeping the agricultural land intact and unfragmented, to maintain the viability of the sugar operation involving the farm as a single unit and thus warrant to the acknowledged farmworker-beneficiaries, hand-in-[hand] with their acquisition of the shares of the capital stock of the corporation owing the land, a continuing and stable source of income." (***Annex "A"***, *supra*).

At the expense of being repetitive, the be sugar-coated assurances were, more than enough to made them fall for the SDO as they made them feel rich as "stock holder" of a rich and famous corporation despite the dirt in their hands and the tatters, they use; given the feeling of security of tenure in their work when there is none; expectation to receive dividends when the corporation has already suspended operations allegedly due to loses; and a stable sugar production by maintaining the agricultural lands when a substantial portion thereof of, almost 1/8 of the total area, has already been converted to non-agricultural uses.

[65] Id. at 694-699.
[66] Id. at 339-342.

Following review, the PARC Validation Committee favorably endorsed the DAR Secretary's recommendation afore-stated.[67]

On December 22, 2005, the PARC issued the assailed Resolution No. 2005-32-01, disposing as follows:

> NOW, THEREFORE, on motion duly seconded, RESOLVED, as it is HEREBY RESOLVED, to approve and confirm the recommendation of the PARC Executive Committee adopting *in toto* the report of the PARC ExCom Validation Committee affirming the recommendation of the DAR to recall/revoke the SDO plan of Tarlac Development Corporation/Hacienda Luisita Incorporated.
>
> RESOLVED, further, that the lands subject of the recalled/revoked TDC/HLI SDO plan be forthwith placed under the compulsory coverage or mandated land acquisition scheme of the [CARP].
>
> APPROVED.[68]

A copy of Resolution No. 2005-32-01 was served on HLI the following day, December 23, without any copy of the documents adverted to in the resolution attached. A letter-request dated December 28, 2005[69] for certified copies of said documents was sent to, but was not acted upon by, the PARC secretariat.

Therefrom, HLI, on January 2, 2006, sought reconsideration.[70] On the same day, the DAR Tarlac provincial office issued the Notice of Coverage[71] which HLI received on January 4, 2006.

Its motion notwithstanding, HLI has filed the instant recourse in light of what it considers as the DAR's hasty placing of Hacienda Luisita under CARP even before PARC could rule or even read the motion for

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[67] Id. at 100.
[68] Id. at 101.
[69] Id. at 146.
[70] Id. at 107-140.
[71] Id. at 103-106.

reconsideration.[72] As HLI later rued, it "can not know from the above-quoted resolution the facts and the law upon which it is based."[73]

PARC would eventually deny HLI's motion for reconsideration via Resolution No. 2006-34-01 dated May 3, 2006.

By Resolution of June 14, 2006,[74] the Court, acting on HLI's motion, issued a temporary restraining order,[75] enjoining the implementation of Resolution No. 2005-32-01 and the notice of coverage.

On July 13, 2006, the OSG, for public respondents PARC and the DAR, filed its Comment[76] on the petition.

On December 2, 2006, Noel Mallari, impleaded by HLI as respondent in his capacity as "Sec-Gen. AMBALA," filed his Manifestation and Motion with Comment Attached dated December 4, 2006 (Manifestation and Motion).[77] In it, Mallari stated that he has broken away from AMBALA with other AMBALA ex-members and formed Farmworkers Agrarian Reform Movement, Inc. (FARM).[78] Should this shift in alliance deny him standing, Mallari also prayed that FARM be allowed to intervene.

As events would later develop, Mallari had a parting of ways with other FARM members, particularly would-be intervenors Renato Lalic, et al. As things stand, Mallari returned to the AMBALA fold, creating the AMBALA-Noel Mallari faction and leaving Renato Lalic, et al. as the remaining members of FARM who sought to intervene.

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[72] Id. at 19.
[73] Id. at 52
[74] Id. at 255-256.
[75] Id. at 257-259.
[76] Id. at 334-367.
[77] Id. at 436-459.
[78] Attys. Edgar Bernal and Florisa Almodiel signed the motion/manifestation as counsel of Mallari and/or FARM.

On January 10, 2007, the Supervisory Group[79] and the AMBALA-Rene Galang faction submitted their Comment/Opposition dated December 17, 2006.[80]

On October 30, 2007, RCBC filed a Motion for Leave to Intervene and to File and Admit Attached Petition-In-Intervention dated October 18, 2007.[81] LIPCO later followed with a similar motion.[82] In both motions, RCBC and LIPCO contended that the assailed resolution effectively nullified the TCTs under their respective names as the properties covered in the TCTs were veritably included in the January 2, 2006 notice of coverage. In the main, they claimed that the revocation of the SDP cannot legally affect their rights as innocent purchasers for value. Both motions for leave to intervene were granted and the corresponding petitions-in-intervention admitted.

On August 18, 2010, the Court heard the main and intervening petitioners on oral arguments. On the other hand, the Court, on August 24, 2010, heard public respondents as well as the respective counsels of the AMBALA-Mallari-Supervisory Group, the AMBALA-Galang faction, and the FARM and its 27 members[83] argue their case.

Prior to the oral arguments, however, HLI; AMBALA, represented by Mallari; the Supervisory Group, represented by Suniga and Andaya; and the United Luisita Workers Union, represented by Eldifonso Pingol, filed with the Court a joint submission and motion for approval of a Compromise Agreement (English and Tagalog versions) dated August 6, 2010.

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[79] The Supervisory Group later teamed up with the AMBALA-Mallari faction. For brevity, they are referred to herein as the "AMBALA-Mallari-Supervisory Group."

[80] *Rollo*, pp. 530-641.

[81] Id. at 1350-1359.

[82] Id. at 1535-1544.

[83] TSN, August 24, 2010, p. 229.

On August 31, 2010, the Court, in a bid to resolve the dispute through an amicable settlement, issued a Resolution[84] creating a Mediation Panel composed of then Associate Justice Ma. Alicia Austria-Martinez, as chairperson, and former CA Justices Hector Hofileña and Teresita Dy-Liacco Flores, as members. Meetings on five (5) separate dates, i.e., September 8, 9, 14, 20, and 27, 2010, were conducted. Despite persevering and painstaking efforts on the part of the panel, mediation had to be discontinued when no acceptable agreement could be reached.

The Issues

HLI raises the following issues for our consideration:

I.

WHETHER OR NOT PUBLIC RESPONDENTS PARC AND SECRETARY PANGANDAMAN HAVE JURISDICTION, POWER AND/OR AUTHORITY TO NULLIFY, RECALL, REVOKE OR RESCIND THE SDOA.

II.

[IF SO], x x x CAN THEY STILL EXERCISE SUCH JURISDICTION, POWER AND/OR AUTHORITY AT THIS TIME, *I.E.*, AFTER SIXTEEN (16) YEARS FROM THE EXECUTION OF THE SDOA AND ITS IMPLEMENTATION WITHOUT VIOLATING SECTIONS 1 AND 10 OF ARTICLE III (BILL OF RIGHTS) OF THE CONSTITUTION AGAINST DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW AND THE IMPAIRMENT OF CONTRACTUAL RIGHTS AND OBLIGATIONS? MOREOVER, ARE THERE LEGAL GROUNDS UNDER THE CIVIL CODE, *viz*, ARTICLE 1191 x x x, ARTICLES 1380, 1381 AND 1382 x x x ARTICLE 1390 x x x AND ARTICLE 1409 x x x THAT CAN BE INVOKED TO NULLIFY, RECALL, REVOKE, OR RESCIND THE SDOA?

III.

WHETHER THE PETITIONS TO NULLIFY, RECALL, REVOKE OR RESCIND THE SDOA HAVE ANY LEGAL BASIS OR GROUNDS AND WHETHER THE PETITIONERS THEREIN ARE THE REAL PARTIES-IN-INTEREST TO FILE SAID PETITIONS.

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[84] *Rollo*, pp. 3060-3062.

IV.

WHETHER THE RIGHTS, OBLIGATIONS AND REMEDIES OF THE PARTIES TO THE SDOA ARE NOW GOVERNED BY THE CORPORATION CODE (BATAS PAMBANSA BLG. 68) AND NOT BY THE x x x [CARL] x x x.

On the other hand, RCBC submits the following issues:

I.

RESPONDENT PARC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT EXCLUDE THE SUBJECT PROPERTY FROM THE COVERAGE OF THE CARP DESPITE THE FACT THAT PETITIONER-INTERVENOR RCBC HAS ACQUIRED VESTED RIGHTS AND INDEFEASIBLE TITLE OVER THE SUBJECT PROPERTY AS AN INNOCENT PURCHASER FOR VALUE.

A. THE ASSAILED RESOLUTION NO. 2005-32-01 AND THE NOTICE OF COVERAGE DATED 02 JANUARY 2006 HAVE THE EFFECT OF NULLIFYING TCT NOS. 391051 AND 391052 IN THE NAME OF PETITIONER-INTERVENOR RCBC.

B. AS AN INNOCENT PURCHASER FOR VALUE, PETITIONER-INTERVENOR RCBC CANNOT BE PREJUDICED BY A SUBSEQUENT REVOCATION OR RESCISSION OF THE SDOA.

II.

THE ASSAILED RESOLUTION NO. 2005-32-01 AND THE NOTICE OF COVERAGE DATED 02 JANUARY 2006 WERE ISSUED WITHOUT AFFORDING PETITIONER-INTERVENOR RCBC ITS RIGHT TO DUE PROCESS AS AN INNOCENT PURCHASER FOR VALUE.

LIPCO, like RCBC, asserts having acquired vested and indefeasible rights over certain portions of the converted property, and, hence, would ascribe on PARC the commission of grave abuse of discretion when it included those portions in the notice of coverage. And apart from raising issues identical with those of HLI, such as but not limited to the absence of valid grounds to warrant the rescission and/or revocation of the SDP, LIPCO would allege that the assailed resolution and the notice of coverage were issued without affording it the right to due process as an innocent purchaser for value. The government, LIPCO also argues, is estopped from recovering properties which have since passed to innocent parties.

Simply formulated, the principal determinative issues tendered in the main petition and to which all other related questions must yield boil down to the following: (1) matters of standing; (2) the constitutionality of Sec. 31 of RA 6657; (3) the jurisdiction of PARC to recall or revoke HLI's SDP; (4) the validity or propriety of such recall or revocatory action; and (5) corollary to (4), the validity of the terms and conditions of the SDP, as embodied in the SDOA.

Our Ruling

I.

We first proceed to the examination of the preliminary issues before delving on the more serious challenges bearing on the validity of PARC's assailed issuance and the grounds for it.

Supervisory Group, AMBALA and their respective leaders are real parties-in-interest

HLI would deny real party-in-interest status to the purported leaders of the Supervisory Group and AMBALA, i.e., Julio Suniga, Windsor Andaya, and Rene Galang, who filed the revocatory petitions before the DAR. As HLI would have it, Galang, the self-styled head of AMBALA, gained HLI employment in June 1990 and, thus, could not have been a party to the SDOA executed a year earlier.[85] As regards the Supervisory Group, HLI alleges that supervisors are not regular farmworkers, but the company nonetheless considered them FWBs under the SDOA as a mere concession to enable them to enjoy the same benefits given qualified regular farmworkers. However, if the SDOA would be canceled and land distribution effected, so HLI claims, citing *Fortich v. Corona*,[86] the supervisors would be excluded from receiving lands as farmworkers other

[85] Id. at 81.
[86] G.R. No. 131457, August 19, 1999, 312 SCRA 751.

than the regular farmworkers who are merely entitled to the "fruits of the land."[87]

The SDOA no less identifies "the SDP qualified beneficiaries" as "**the farmworkers who appear in the annual payroll, inclusive of the permanent and seasonal employees, who are regularly or periodically employed by [HLI]**."[88] Galang, per HLI's own admission, is employed by HLI, and is, thus, a qualified beneficiary of the SDP; he comes within the definition of a real party-in-interest under Sec. 2, Rule 3 of the Rules of Court, meaning, one who stands to be benefited or injured by the judgment in the suit or is the party entitled to the avails of the suit.

The same holds true with respect to the Supervisory Group whose members were admittedly employed by HLI and whose names and signatures even appeared in the annex of the SDOA. Being qualified beneficiaries of the SDP, Suniga and the other 61 supervisors are certainly parties who would benefit or be prejudiced by the judgment recalling the SDP or replacing it with some other modality to comply with RA 6657.

Even assuming that members of the Supervisory Group are not regular farmworkers, but are in the category of "other farmworkers" mentioned in Sec. 4, Article XIII of the Constitution,[89] thus only entitled to a share of the fruits of the land, as indeed *Fortich* teaches, this does not detract from the fact that they are still identified as being among the "SDP qualified beneficiaries." As such, they are, thus, entitled to bring an action upon the SDP.[90] At any rate, the following admission made by Atty. Gener Asuncion,

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[87] *Rollo*, p. 82.

[88] Id. at 149.

[89] Sec. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farm workers, who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

[90] *Consumido v. Ros*, G.R. No. 166875, July 31, 2007, 528 SCRA 696, 702.

counsel of HLI, during the oral arguments should put to rest any lingering doubt as to the status of protesters Galang, Suniga, and Andaya:

> Justice Bersamin: x x x I heard you a while ago that you were conceding the qualified farmer beneficiaries of Hacienda Luisita were real parties in interest?
>
> Atty. Asuncion: Yes, Your Honor please, real party in interest which that question refers to the complaints of protest initiated before the DAR and the real party in interest there be considered as possessed by the farmer beneficiaries who initiated the protest.[91]

Further, under Sec. 50, paragraph 4 of RA 6657, farmer-leaders are expressly allowed to represent themselves, their fellow farmers or their organizations in any proceedings before the DAR. Specifically:

> SEC. 50. Quasi-Judicial Powers of the DAR.—x x x
>
> x x x x
>
> **Responsible farmer leaders shall be allowed to represent themselves, their fellow farmers or their organizations in any proceedings before the DAR**: Provided, however, that when there are two or more representatives for any individual or group, the representatives should choose only one among themselves to represent such party or group before any DAR proceedings. (Emphasis supplied.)

Clearly, the respective leaders of the Supervisory Group and AMBALA are contextually real parties-in-interest allowed by law to file a petition before the DAR or PARC.

This is not necessarily to say, however, that Galang represents AMBALA, for as records show and as HLI aptly noted,[92] his "*petisyon*" filed with DAR did not carry the usual authorization of the individuals in whose behalf it was supposed to have been instituted. To date, such authorization document, which would logically include a list of the names of the authorizing FWBs, has yet to be submitted to be part of the records.

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[91] TSN, August 18, 2010, p. 141.
[92] *Rollo*, p. 871.

PARC's Authority to Revoke a Stock Distribution Plan

On the postulate that the subject jurisdiction is conferred by law, HLI maintains that PARC is without authority to revoke an SDP, for neither RA 6657 nor EO 229 expressly vests PARC with such authority. While, as HLI argued, EO 229 empowers PARC to approve the plan for stock distribution in appropriate cases, the empowerment only includes the power to disapprove, but not to recall its previous approval of the SDP after it has been implemented by the parties.[93] To HLI, it is the court which has jurisdiction and authority to order the revocation or rescission of the PARC-approved SDP.

We disagree.

Under Sec. 31 of RA 6657, as implemented by DAO 10, the authority to approve the plan for stock distribution of the corporate landowner belongs to PARC. However, contrary to petitioner HLI's posture, PARC also has the power to revoke the SDP which it previously approved. It may be, as urged, that RA 6657 or other executive issuances on agrarian reform do not explicitly vest the PARC with the power to revoke/recall an approved SDP. Such power or authority, however, is deemed possessed by PARC under the **principle of necessary implication, a basic postulate that what is implied in a statute is as much a part of it as that which is expressed**.[94]

We have explained that "every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms."[95] Further, "every

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[93] Id. at 38.

[94] *Atienza v. Villarosa*, G.R. No. 161081, May 10, 2005, 458 SCRA 385, 403; citing *Chua v. Civil Service Commission*, G.R. No. 88979, February 7, 1992, 206 SCRA 65.

[95] Id.

statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege.[96]

Gordon v. Veridiano II is instructive:

> **The power to approve a license includes by implication, even if not expressly granted, the power to revoke it.** By extension, the power to revoke is limited by the authority to grant the license, from which it is derived in the first place. Thus, if the FDA grants a license upon its finding that the applicant drug store has complied with the requirements of the general laws and the implementing administrative rules and regulations, it is only for their violation that the FDA may revoke the said license. By the same token, having granted the permit upon his ascertainment that the conditions thereof as applied x x x have been complied with, it is only for the violation of such conditions that the mayor may revoke the said permit.[97] (Emphasis supplied.)

Following the doctrine of necessary implication, it may be stated that the conferment of express power to approve a plan for stock distribution of the agricultural land of corporate owners necessarily includes the power to revoke or recall the approval of the plan.

As public respondents aptly observe, to deny PARC such revocatory power would reduce it into a toothless agency of CARP, because the very same agency tasked to ensure compliance by the corporate landowner with the approved SDP would be without authority to impose sanctions for non-compliance with it.[98] With the view We take of the case, only PARC can effect such revocation. The DAR Secretary, by his own authority as such, cannot plausibly do so, as the acceptance and/or approval of the SDP sought to be taken back or undone is the act of PARC whose official composition includes, no less, the President as chair, the DAR Secretary as vice-chair, and at least eleven (11) other department heads.[99]

On another but related issue, the HLI foists on the Court the argument that subjecting its landholdings to compulsory distribution after its approved

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[96] Id.
[97] No. L-55230, November 8, 1988, 167 SCRA 51, 59-60.
[98] Public respondents' Memorandum, p. 24
[99] EO 229, Sec. 18.

SDP has been implemented would impair the contractual obligations created under the SDOA.

The broad sweep of HLI's argument ignores certain established legal precepts and must, therefore, be rejected.

A law authorizing interference, when appropriate, in the contractual relations between or among parties is deemed read into the contract and its implementation cannot successfully be resisted by force of the non-impairment guarantee. There is, in that instance, no impingement of the impairment clause, the non-impairment protection being applicable only to laws that derogate **prior** acts or contracts by enlarging, abridging or in any manner changing the intention of the parties. Impairment, in fine, obtains if a **subsequent** law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws existing remedies for the enforcement of the rights of the parties.[100] Necessarily, the constitutional proscription would not apply to laws already in effect at the time of contract execution, as in the case of RA 6657, in relation to DAO 10, vis-à-vis HLI's SDOA. As held in *Serrano v. Gallant Maritime Services, Inc.*:

> The prohibition [against impairment of the obligation of contracts] is aligned with the general principle that laws newly enacted have only a *prospective operation*, and cannot affect acts or contracts already perfected; however, as to laws already in existence, their provisions are read into contracts and deemed a part thereof. **Thus, the non-impairment clause under Section 10, Article II [of the Constitution] is limited in application to laws about to be enacted that would in any way derogate from existing acts or contracts by enlarging, abridging or in any manner changing the intention of the parties thereto**.[101] (Emphasis supplied.)

Needless to stress, the assailed Resolution No. 2005-32-01 is not the kind of issuance within the ambit of Sec. 10, Art. III of the Constitution

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[100] *BANAT Party-list v. COMELEC*, G.R. No. 177508, August 7, 2009, 595 SCRA 477, 498.
[101] G.R. No. 167614, March 24, 2009, 582 SCRA 254, 275-276.

providing that "*[n]o law impairing the obligation of contracts shall be passed*."

Parenthetically, HLI tags the SDOA as an ordinary civil law contract and, as such, a breach of its terms and conditions is not a PARC administrative matter, but one that gives rise to a cause of action cognizable by regular courts.[102] This contention has little to commend itself. The SDOA is a **special contract imbued with public interest**, entered into and crafted pursuant to the provisions of RA 6657. It embodies the SDP, which requires for its validity, or at least its enforceability, PARC's approval. And the fact that the certificate of compliance[103]—to be issued by agrarian authorities upon completion of the distribution of stocks—is revocable by the same issuing authority supports the idea that everything about the implementation of the SDP is, at the first instance, subject to administrative adjudication.

HLI also parlays the notion that the parties to the SDOA should now look to the Corporation Code, instead of to RA 6657, in determining their rights, obligations and remedies. The Code, it adds, should be the applicable law on the disposition of the agricultural land of HLI.

Contrary to the view of HLI, the rights, obligations and remedies of the parties to the SDOA embodying the SDP are primarily governed by RA 6657. It should abundantly be made clear that HLI was precisely created in order to comply with RA 6657, which the OSG aptly described as the "mother law" of the SDOA and the SDP.[104] It is, thus, paradoxical for HLI to shield itself from the coverage of CARP by invoking exclusive

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[102] *Rollo*, p. 40; TSN August 18, 2010, p. 74.

[103] **DAO 10, Section 11.** ***Implementation / Monitoring of Plan***—The approved [SDP] shall be implemented within three (3) months x x x.

Upon completion [of the stock distribution], the corporate landowner-applicant shall be issued a Certificate of Compliance. x x x

Section 12. Non-compliance with any of the requirements of Section 31 of RA 6675, as implemented by this Implementing Guidelines shall be grounds for the revocation of the Certificate of Compliance issued to the corporate landowner-applicant. x x x

[104] TSN, August 24, 2010, p. 13.

applicability of the Corporation Code under the guise of being a corporate entity.

Without in any way minimizing the relevance of the Corporation Code since the FWBs of HLI are also stockholders, its applicability is limited as the rights of the parties arising from the SDP should not be made to supplant or circumvent the agrarian reform program.

Without doubt, the Corporation Code is the general law providing for the formation, organization and regulation of private corporations. On the other hand, RA 6657 is the special law on agrarian reform. As between a general and special law, the latter shall prevail—*generalia specialibus non derogant*.[105] Besides, the present impasse between HLI and the private respondents is not an intra-corporate dispute which necessitates the application of the Corporation Code. What private respondents questioned before the DAR is the proper implementation of the SDP and HLI's compliance with RA 6657. Evidently, RA 6657 should be the applicable law to the instant case.

HLI further contends that the inclusion of the agricultural land of Hacienda Luisita under the coverage of CARP and the eventual distribution of the land to the FWBs would amount to a disposition of all or practically all of the corporate assets of HLI. HLI would add that this contingency, if ever it comes to pass, requires the applicability of the Corporation Code provisions on corporate dissolution.

We are not persuaded.

Indeed, the provisions of the Corporation Code on corporate dissolution would apply insofar as the winding up of HLI's affairs or liquidation of the assets is concerned. However, the mere inclusion of the

[105] *Koruga v. Arcenas*, G.R. Nos. 168332 and 169053, June 19, 2009, 590 SCRA 49, 68; citing *In Re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc., PDIC v. Bureau of Internal Revenue*, G.R. No. 158261, December 18, 2006, 511 SCRA 123, 141.

agricultural land of Hacienda Luisita under the coverage of CARP and the land's eventual distribution to the FWBs will not, without more, automatically trigger the dissolution of HLI. As stated in the SDOA itself, the percentage of the value of the agricultural land of Hacienda Luisita in relation to the total assets transferred and conveyed by Tadeco to HLI comprises only 33.296%, following this equation: value of the agricultural lands divided by total corporate assets. By no stretch of imagination would said percentage amount to a disposition of all or practically all of HLI's corporate assets should compulsory land acquisition and distribution ensue.

This brings us to the validity of the revocation of the approval of the SDP sixteen (16) years after its execution pursuant to Sec. 31 of RA 6657 for the reasons set forth in the Terminal Report of the Special Task Force, as endorsed by PARC Excom. But first, the matter of the constitutionality of said section.

Constitutional Issue

FARM asks for the invalidation of Sec. 31 of RA 6657, insofar as it affords the corporation, as a mode of CARP compliance, to resort to stock distribution, an arrangement which, to FARM, impairs the fundamental right of farmers and farmworkers under Sec. 4, Art. XIII of the Constitution.[106]

To a more specific, but direct point, FARM argues that Sec. 31 of RA 6657 permits stock transfer in lieu of outright agricultural land transfer; in fine, there is stock certificate ownership of the farmers or farmworkers instead of them owning the land, as envisaged in the Constitution. For FARM, this modality of distribution is an anomaly to be annulled for being inconsistent with the basic concept of agrarian reform ingrained in Sec. 4, Art. XIII of the Constitution.[107]

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[106] TSN, August 24, 2010, p. 205.
[107] Id.

Reacting, HLI insists that agrarian reform is not only about transfer of land ownership to farmers and other qualified beneficiaries. It draws attention in this regard to Sec. 3(a) of RA 6657 on the concept and scope of the term "**agrarian reform**." The constitutionality of a law, HLI added, cannot, as here, be attacked collaterally.

The instant challenge on the constitutionality of Sec. 31 of RA 6657 and necessarily its counterpart provision in EO 229 must fail as explained below.

When the Court is called upon to exercise its power of judicial review over, and pass upon the constitutionality of, acts of the executive or legislative departments, it does so only when the following essential requirements are first met, to wit:

(1) there is an actual case or controversy;

(2) that the constitutional question is raised at the earliest possible opportunity by a proper party or one with *locus standi*; and

(3) the issue of constitutionality must be the very *lis mota* of the case.[108]

Not all the foregoing requirements are satisfied in the case at bar.

While there is indeed an actual case or controversy, intervenor FARM, composed of a small minority of 27 farmers, has yet to explain its failure to challenge the constitutionality of Sec. 3l of RA 6657, since as early as November 21, l989 when PARC approved the SDP of Hacienda Luisita or at least within a reasonable time thereafter and why its members received benefits from the SDP without so much of a protest. It was only on December 4, 2003 or 14 years after approval of the SDP via PARC Resolution No. 89-12-2 dated November 21, 1989 that said plan and approving resolution were sought to be revoked, but not, to stress, by FARM

[108] *Garcia v. Executive Secretary*, G.R. No. 157584, April 2, 2009, 583 SCRA 119, 129; citing *Franciso, Jr. v. House of Representatives*, G.R. No. 160261, November 10, 2003, 415 SCRA 44.

or any of its members, but by petitioner AMBALA. Furthermore, the AMBALA petition did NOT question the constitutionality of Sec. 31 of RA 6657, but concentrated on the purported flaws and gaps in the subsequent implementation of the SDP. Even the public respondents, as represented by the Solicitor General, did not question the constitutionality of the provision. On the other hand, FARM, whose 27 members formerly belonged to AMBALA, raised the constitutionality of Sec. 31 only on May 3, 2007 when it filed its Supplemental Comment with the Court. Thus, it took FARM some eighteen (18) years from November 21, 1989 before it challenged the constitutionality of Sec. 31 of RA 6657 which is quite too late in the day. The FARM members slept on their rights and even accepted benefits from the SDP with nary a complaint on the alleged unconstitutionality of Sec. 31 upon which the benefits were derived. The Court cannot now be goaded into resolving a constitutional issue that FARM failed to assail after the lapse of a long period of time and the occurrence of numerous events and activities which resulted from the application of an alleged unconstitutional legal provision.

It has been emphasized in a number of cases that the question of constitutionality will not be passed upon by the Court unless it is properly raised and presented in an appropriate case at the first opportunity.[109] FARM is, therefore, remiss in belatedly questioning the constitutionality of Sec. 31 of RA 6657. The second requirement that the constitutional question should be raised at the earliest possible opportunity is clearly wanting.

The last but the most important requisite that the constitutional issue must be the very *lis mota* of the case does not likewise obtain. The *lis mota* aspect is not present, the constitutional issue tendered not being critical to the resolution of the case. The unyielding rule has been to avoid, whenever

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[109] *ABS-CBN Broadcasting Corporation v. Philippine Multi-Media System, Inc.*, G.R. Nos. 175769-70, January 19, 2009, 576 SCRA 262, 289 citing *Philippine Veterans Bank v. Court of Appeals*, G.R. No. 132561, June 30, 2005, 462 SCRA 336; *Apex Mining Co., Inc. v. Southeast Mindanao Gold Mining Corp.*, G.R. Nos. 152613, 152628, 162619-20 and 152870-71.

plausible, an issue assailing the constitutionality of a statute or governmental act.[110] If some other grounds exist by which judgment can be made without touching the constitutionality of a law, such recourse is favored.[111] *Garcia v. Executive Secretary* explains why:

> *Lis Mota* — the fourth requirement to satisfy before this Court will undertake judicial review — means that the Court will not pass upon a question of unconstitutionality, although properly presented, *if the case can be disposed of on some other ground, such as the application of the statute or the general law*. The petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined. This requirement is based on the rule that every law has in its favor the presumption of constitutionality; to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative, or argumentative.[112] (Italics in the original.)

The *lis mota* in this case, proceeding from the basic positions originally taken by AMBALA (to which the FARM members previously belonged) and the Supervisory Group, is the alleged non-compliance by HLI with the conditions of the SDP to support a plea for its revocation. And before the Court, the *lis mota* is whether or not PARC acted in grave abuse of discretion when it ordered the recall of the SDP for such non-compliance and the fact that the SDP, as couched and implemented, offends certain constitutional and statutory provisions. To be sure, any of these key issues may be resolved without plunging into the constitutionality of Sec. 31 of RA 6657. Moreover, looking deeply into the underlying petitions of AMBALA, et al., it is not the said section per se that is invalid, but rather it is the alleged application of the said provision in the SDP that is flawed.

It may be well to note at this juncture that Sec. 5 of RA 9700,[113] amending Sec. 7 of RA 6657, has all but superseded Sec. 31 of RA 6657 vis-à-vis the stock distribution component of said Sec. 31. In its pertinent part, Sec. 5 of RA 9700 provides: "**[T]hat after June 30, 2009, the modes**

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[110] *Franciso, Jr. v. House of Representatives*, supra note 108.

[111] *Alvarez v. PICOP Resources, Inc.*, G.R. Nos. 162243, etc., November 29, 2006, 508 SCRA 498, 552.

[112] Supra note 108, at 138-139.

[113] An Act Strengthening the CARP, Extending the Acquisition and Distribution of all Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of RA 6657, as Amended and Appropriating Funds therefor.

of acquisition shall be limited to voluntary offer to sell and compulsory acquisition." Thus, for all intents and purposes, the stock distribution scheme under Sec. 31 of RA 6657 is no longer an available option under existing law. The question of whether or not it is unconstitutional should be a moot issue.

It is true that the Court, in some cases, has proceeded to resolve constitutional issues otherwise already moot and academic[114] provided the following requisites are present:

> x x x *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; *fourth*, the case is capable of repetition yet evading review.

These requisites do not obtain in the case at bar.

For one, there appears to be no breach of the fundamental law. Sec. 4, Article XIII of the Constitution reads:

> The State shall, by law, undertake an agrarian reform program founded on the right of the farmers and regular farmworkers, who are landless, to OWN directly or COLLECTIVELY THE LANDS THEY TILL or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing. (Emphasis supplied.)

The wording of the provision is unequivocal—the farmers and regular farmworkers have a right TO OWN DIRECTLY OR COLLECTIVELY THE LANDS THEY TILL. The basic law allows two (2) modes of land distribution—direct and indirect ownership. Direct transfer to individual farmers is the most commonly used method by DAR and widely accepted.

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[114] *Quizon v. Comelec*, 545 SCRA 635; *Mattel, Inc. v. Francisco*, 560 SCRA 506.

Indirect transfer through collective ownership of the agricultural land is the alternative to direct ownership of agricultural land by individual farmers. The aforequoted Sec. 4 EXPRESSLY authorizes collective ownership by farmers. No language can be found in the 1987 Constitution that disqualifies or prohibits corporations or cooperatives of farmers from being the legal entity through which collective ownership can be exercised. The word "collective" is defined as "indicating a number of persons or things considered as constituting one group or aggregate,"[115] while "collectively" is defined as "in a collective sense or manner; in a mass or body."[116] By using the word "collectively," the Constitution allows for indirect ownership of land and not just outright agricultural land transfer. This is in recognition of the fact that land reform may become successful even if it is done through the medium of juridical entities composed of farmers.

Collective ownership is permitted in two (2) provisions of RA 6657. Its Sec. 29 allows workers' cooperatives or associations to collectively own the land, while the second paragraph of Sec. 31 allows corporations or associations to own agricultural land with the farmers becoming stockholders or members. Said provisions read:

> SEC. 29. *Farms owned or operated by corporations or other business associations*.—In the case of farms owned or operated by corporations or other business associations, the following rules shall be observed by the PARC.
>
> In general, lands shall be distributed directly to the individual worker-beneficiaries.
>
> In case it is not economically feasible and sound to divide the land, then **it shall be owned collectively by the worker beneficiaries who shall form a workers' cooperative or association** which will deal with the corporation or business association. x x x (Emphasis supplied.)
>
> SEC. 31. *Corporate Landowners*.— x x x
>
> x x x x

[115] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY UNABRIDGED 444-445 (1993).
[116] Id. at 445.

> Upon certification by the DAR, **corporations** owning agricultural lands may give their qualified beneficiaries the right to purchase such proportion of the capital stock of the **corporation** that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets, under such terms and conditions as may be agreed upon by them. In no case shall the compensation received by the workers at the time the shares of stocks are distributed be reduced. The same principle shall be applied to **associations**, with respect to their equity or participation. x x x (Emphasis supplied.)

Clearly, workers' cooperatives or associations under Sec. 29 of RA 6657 and corporations or associations under the succeeding Sec. 31, as differentiated from individual farmers, are authorized vehicles for the collective ownership of agricultural land. Cooperatives can be registered with the Cooperative Development Authority and acquire legal personality of their own, while corporations are juridical persons under the Corporation Code. Thus, Sec. 31 is constitutional as it simply implements Sec. 4 of Art. XIII of the Constitution that land can be owned COLLECTIVELY by farmers. Even the framers of the l987 Constitution are in unison with respect to the two (2) modes of ownership of agricultural lands tilled by farmers—DIRECT and COLLECTIVE, thus:

> MR. NOLLEDO. And when we talk of the phrase "to own **directly**," we mean the principle of **direct ownership by the tiller**?
>
> MR. MONSOD. Yes.
>
> MR. NOLLEDO. And when we talk of "**collectively**," we mean communal ownership, stewardship or State ownership?
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> MS. NIEVA. In this section, we conceive of cooperatives; **that is farmers' cooperatives owning the land**, not the State.
>
> MR. NOLLEDO. And when we talk of "**collectively**," referring to farmers' cooperatives, do the farmers own specific areas of land where they only unite in their efforts?
>
> MS. NIEVA. That is one way.
>
> MR. NOLLEDO. Because I understand that there are two basic systems involved: the "moshave" type of agriculture and the "kibbutz." So are both contemplated in the report?

> MR. TADEO. **Ang dalawa kasing pamamaraan ng pagpapatupad ng tunay na reporma sa lupa ay ang pagmamay-ari ng lupa na hahatiin sa individual na pagmamay-ari – directly – at ang tinatawag na sama-samang gagawin ng mga magbubukid.** Tulad sa Negros, ang gusto ng mga magbubukid ay gawin nila itong "cooperative or collective farm." Ang ibig sabihin ay **sama-sama** nilang sasakahin.
>
> x x x x
>
> MR. TINGSON. x x x When we speak here of "to own directly or collectively the lands they till," is this land for the tillers rather than land for the landless? Before, we used to hear "land for the landless," but now the slogan is "land for the tillers." Is that right?
>
> MR. TADEO. Ang prinsipyong umiiral dito ay iyong land for the tillers. **Ang ibig sabihin ng "directly" ay tulad sa implementasyon sa rice and corn lands kung saan inaari na ng mga magsasaka ang lupang binubungkal nila. Ang ibig sabihin naman ng "collectively" ay sama-samang paggawa sa isang lupain o isang bukid**, katulad ng sitwasyon sa Negros.[117] (Emphasis supplied.)

As Commissioner Tadeo explained, the farmers will work on the agricultural land "sama-sama" or collectively. Thus, the main requisite for collective ownership of land is collective or group work by farmers of the agricultural land. Irrespective of whether the landowner is a cooperative, association or corporation composed of farmers, as long as concerted group work by the farmers on the land is present, then it falls within the ambit of collective ownership scheme.

Likewise, Sec. 4, Art. XIII of the Constitution makes mention of a commitment on the part of the State to pursue, **by law**, an agrarian reform program founded on the policy of land for the landless, but subject to such priorities as Congress may prescribe, taking into account such abstract variable as "equity considerations." The textual reference to a law and Congress necessarily implies that the above constitutional provision is **not self-executory** and that legislation is needed to implement the urgently needed program of agrarian reform. And RA 6657 has been enacted precisely pursuant to and as a mechanism to carry out the constitutional

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[117] Records of the Constitutional Commission, Vol. II, p. 678.

directives. This piece of legislation, in fact, restates[118] the agrarian reform policy established in the aforementioned provision of the Constitution of promoting the welfare of landless farmers and farmworkers. RA 6657 thus defines "agrarian reform" as "the redistribution of lands … to farmers and regular farmworkers who are landless … to lift the economic status of the beneficiaries and **all other arrangements alternative to the physical redistribution of lands**, such as production or profit sharing, labor administration and the **distribution of shares of stock** which will allow beneficiaries to receive a just share of the fruits of the lands they work."

With the view We take of this case, the stock distribution option devised under Sec. 31 of RA 6657 hews with the agrarian reform policy, as instrument of social justice under Sec. 4 of Article XIII of the Constitution. Albeit land ownership for the landless appears to be the dominant theme of that policy, We emphasize that Sec. 4, Article XIII of the Constitution, as couched, does not constrict Congress to passing an agrarian reform law planted on direct land transfer to and ownership by farmers and no other, or else the enactment suffers from the vice of unconstitutionality. If the intention were otherwise, the framers of the Constitution would have worded said section in a manner mandatory in character.

For this Court, Sec. 31 of RA 6657, with its direct and indirect transfer features, is not inconsistent with the State's commitment to farmers and farmworkers to advance their interests under the policy of social justice. The legislature, thru Sec. 31 of RA 6657, has chosen a modality for collective ownership by which the imperatives of social justice may, in its estimation, be approximated, if not achieved. The Court should be bound by such policy choice.

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[118] Sec. 2, 3rd paragraph , of RA 6657 states: The agrarian reform program is founded on the right of farmers and regular farmers who are landless, to own land directly or collectively the lands they till or, in the case of other farmworkers to receive a share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to priorities and retention limits set forth in this Act x x x.

FARM contends that the farmers in the stock distribution scheme under Sec. 31 do not own the agricultural land but are merely given stock certificates. Thus, the farmers lose control over the land to the board of directors and executive officials of the corporation who actually manage the land. They conclude that such arrangement runs counter to the mandate of the Constitution that any agrarian reform must preserve the control over the land in the hands of the tiller.

This contention has no merit.

While it is true that the farmer is issued stock certificates and does not directly own the land, still, the Corporation Code is clear that the FWB becomes a stockholder who acquires an equitable interest in the assets of the corporation, which include the agricultural lands. It was explained that the "equitable interest of the shareholder in the property of the corporation is represented by the term stock, and the extent of his interest is described by the term shares. The expression shares of stock when qualified by words indicating number and ownership expresses the extent of the owner's interest in the corporate property."[119] A share of stock typifies an aliquot part of the corporation's property, or the right to share in its proceeds to that extent when distributed according to law and equity and that its holder is not the owner of any part of the capital of the corporation.[120] However, the FWBs will ultimately own the agricultural lands owned by the corporation when the corporation is eventually dissolved and liquidated.

Liquidation, which is a necessary consequence of the dissolution of a corporation, entails the winding up of the affairs of the corporation.[121] This involves the "collection of all assets, the payment of all its creditors, and the distribution of the remaining assets, if any, among the stockholders thereof in accordance with their contracts, or if there be no special contract, on the

[119] 11 Fletcher, Cyc. Corps. (1971 Rev. Vol.) Sec. 5083.
[120] *Mobilia Products, Inc. v. Umezawa*, G.R. Nos. 149357 and 149403, March 4, 2005.
[121] *Yu v. Yukayguan*, G.R. No. 177549, June 18, 2009.

basis of their respective interests."[122] Thus, upon liquidation, the FWBs will ultimately own the corporate assets which include the agricultural lands.

Anent the alleged loss of control of the farmers over the agricultural land operated and managed by the corporation, a reading of the second paragraph of Sec. 31 shows otherwise. Said provision provides that qualified beneficiaries have "the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets." The wording of the formula in the computation of the number of shares that can be bought by the farmers does not mean loss of control on the part of the farmers. It must be remembered that the determination of the percentage of the capital stock that can be bought by the farmers depends on the value of the agricultural land and the value of the total assets of the corporation.

There is, thus, nothing unconstitutional in the formula prescribed by RA 6657. The policy on agrarian reform is that control over the agricultural land must always be in the hands of the farmers. Then it falls on the shoulders of DAR and PARC to see to it the farmers should always own majority of the common shares entitled to elect the members of the board of directors to ensure that the farmers will have a clear majority in the board. Before the SDP is approved, strict scrutiny of the proposed SDP must always be undertaken by the DAR and PARC, such that the value of the agricultural land contributed to the corporation must always be more than 50% of the total assets of the corporation to ensure that the majority of the members of the board of directors are composed of the farmers. The PARC composed of the President of the Philippines and cabinet secretaries must see to it that control over the board of directors rests with the farmers by rejecting the inclusion of non-agricultural assets which will yield the majority in the board of directors to non-farmers. Any deviation, however, by PARC or DAR from the correct application of the formula prescribed by the second paragraph of Sec. 31 of RA 6675 does not make said provision

[122] Id.

constitutionally infirm. Rather, it is the application of said provision that can be challenged. Ergo, Sec. 31 of RA 6657 does not trench on the constitutional policy of ensuring control by the farmers.

A view has been advanced that there can be no agrarian reform unless there is land distribution and that actual land distribution is the essential characteristic of a constitutional agrarian reform program. On the contrary, there have been so many instances where, despite actual land distribution, the implementation of agrarian reform was still unsuccessful. As a matter of fact, this Court may take judicial notice of cases where FWBs sold the awarded land even to non-qualified persons and in violation of the prohibition period provided under the law. This only proves to show that the mere fact that there is land distribution does not guarantee a successful implementation of agrarian reform.

As it were, the principle of "land to the tiller" and the old pastoral model of land ownership where non-human juridical persons, such as corporations, were prohibited from owning agricultural lands are no longer realistic under existing conditions. Practically, an individual farmer will often face greater disadvantages and difficulties than those who exercise ownership in a collective manner through a cooperative or corporation. The former is too often left to his own devices when faced with failing crops and bad weather, or compelled to obtain usurious loans in order to purchase costly fertilizers or farming equipment. The experiences learned from failed land reform activities in various parts of the country are lack of financing, lack of farm equipment, lack of fertilizers, lack of guaranteed buyers of produce, lack of farm-to-market roads, among others. Thus, at the end of the day, there is still no successful implementation of agrarian reform to speak of in such a case.

Although success is not guaranteed, a cooperative or a corporation stands in a better position to secure funding and competently maintain the agri-business than the individual farmer. While direct singular ownership

over farmland does offer advantages, such as the ability to make quick decisions unhampered by interference from others, yet at best, these advantages only but offset the disadvantages that are often associated with such ownership arrangement. Thus, government must be flexible and creative in its mode of implementation to better its chances of success. One such option is collective ownership through juridical persons composed of farmers.

Aside from the fact that there appears to be no violation of the Constitution, the requirement that the instant case be capable of repetition yet evading review is also wanting. It would be speculative for this Court to assume that the legislature will enact another law providing for a similar stock option.

As a matter of sound practice, the Court will not interfere inordinately with the exercise by Congress of its official functions, the heavy presumption being that a law is the product of earnest studies by Congress to ensure that no constitutional prescription or concept is infringed.[123] Corollarily, courts will not pass upon questions of wisdom, expediency and justice of legislation or its provisions. Towards this end, all reasonable doubts should be resolved in favor of the constitutionality of a law and the validity of the acts and processes taken pursuant thereof.[124]

Consequently, before a statute or its provisions duly challenged are voided, an unequivocal breach of, or a clear conflict with the Constitution, not merely a doubtful or argumentative one, must be demonstrated in such a manner as to leave no doubt in the mind of the Court. In other words, the grounds for nullity must be beyond reasonable doubt.[125] FARM has not presented compelling arguments to overcome the presumption of constitutionality of Sec. 31 of RA 6657.

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[123] *Cawaling v. COMELEC*, G.R. No. 146319, October 26, 2001, 368 SCRA 453.
[124] *Basco v. PAGCOR*, G.R. No. 138298, November 29, 2000, 346 SCRA 485
[125] *Angara v. Electoral Commission*, 63 Phil. 139 (1936); *Cawaling v. COMELEC*, supra, citing *Alvarez v. Guingona*, 252 SCRA 695 (1996).

The wisdom of Congress in allowing an SDP through a corporation as an alternative mode of implementing agrarian reform is not for judicial determination. Established jurisprudence tells us that it is not within the province of the Court to inquire into the wisdom of the law, for, indeed, We are bound by words of the statute.[126]

II.

The stage is now set for the determination of the propriety under the premises of the revocation or recall of HLI's SDP. Or to be more precise, the inquiry should be: whether or not PARC gravely abused its discretion in revoking or recalling the subject SDP and placing the hacienda under CARP's compulsory acquisition and distribution scheme.

The findings, analysis and recommendation of the DAR's Special Task Force contained and summarized in its Terminal Report provided the bases for the assailed PARC revocatory/recalling Resolution. The findings may be grouped into two: (1) the SDP is contrary to either the policy on agrarian reform, Sec. 31 of RA 6657, or DAO 10; and (2) the alleged violation by HLI of the conditions/terms of the SDP. In more particular terms, the following are essentially the reasons underpinning PARC's revocatory or recall action:

(1) Despite the lapse of 16 years from the approval of HLI's SDP, the lives of the FWBs have hardly improved and the promised increased income has not materialized;

(2) HLI has failed to keep Hacienda Luisita intact and unfragmented;

(3) The issuance of HLI shares of stock on the basis of number of hours worked—or the so-called "man days"—is grossly onerous to the FWBs, as HLI, in the guise of rotation, can unilaterally deny work to anyone.

[126] *National Food Authority v. Masda Security Agency, Inc.*, G.R. No. 163448, March 8, 2005.

In elaboration of this ground, PARC's Resolution No. 2006-34-01, denying HLI's motion for reconsideration of Resolution No. 2005-32-01, stated that the man days criterion worked to dilute the entitlement of the original share beneficiaries;[127]

(4) The distribution/transfer of shares was not in accordance with the timelines fixed by law;

(5) HLI has failed to comply with its obligations to grant 3% of the gross sales every year as production-sharing benefit on top of the workers' salary; and

(6) Several homelot awardees have yet to receive their individual titles.

Petitioner HLI claims having complied with, at least substantially, all its obligations under the SDP, as approved by PARC itself, and tags the reasons given for the revocation of the SDP as unfounded.

Public respondents, on the other hand, aver that the assailed resolution rests on solid grounds set forth in the Terminal Report, a position shared by AMBALA, which, in some pleadings, is represented by the same counsel as that appearing for the Supervisory Group.

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[127] *Rollo*, p. 794. The PARC resolution also states:

HLI's implementation of the distribution of the mandatory minimum ratio of land-to-shares of stock to the ARBs [Agrarian Reform Beneficiaries] was based on man days, within its policy of no-work no-shares of stock, and not to equal number of shares depending upon their rightful share, as required in the rules, and therefore practically divested the ARBs, as to their qualification/entitlement, as ARBs at HLI's whims, to their disadvantage and prejudice in the form of diminution in the minimum ration of shares. Having increased x x x the number of workers (contractual), the **equity share of each permanent employee, as of 1989, naturally had to be, as in fact, reduced.**

Further x x x, HLI took it upon itself, or usurped, the duty or mandate of DAR to qualify the recipient ARBs and imposed its own criteria and discretion in the allocation of the mandatory minimum ratio of land-to share by basing the distribution on the number of days worked. Still worse, HLI made allocation to recipients who are not in the ARBs original masterlist as admittedly, **it distributed to about 11,955 stockholders of record 59,362,611 shares representing the second half of the total number of shares earmarked for distribution when in fact there were only 6,296 farm workers** or less, at the time when the land was placed under CARP under the SDP/SDO scheme. (Emphasis added.)

FARM, for its part, posits the view that legal bases obtain for the revocation of the SDP, because it does not conform to Sec. 31 of RA 6657 and DAO 10. And training its sight on the resulting dilution of the equity of the FWBs appearing in HLI's masterlist, FARM would state that the SDP, as couched and implemented, spawned disparity when there should be none; parity when there should have been differentiation.[128]

The petition is not impressed with merit.

In the Terminal Report adopted by PARC, it is stated that the SDP violates the agrarian reform policy under Sec. 2 of RA 6657, as the said plan failed to enhance the dignity and improve the quality of lives of the FWBs through greater productivity of agricultural lands. We disagree.

Sec. 2 of RA 6657 states:

> SECTION 2. *Declaration of Principles and Policies*.—It is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP). The welfare of the landless farmers and farm workers will receive the highest consideration to promote social justice and to move the nation towards sound rural development and industrialization, and the establishment of owner cultivatorship of economic-sized farms as the basis of Philippine agriculture.
>
> To this end, a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation, shall be undertaken to provide farmers and farm workers **with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.**
>
> The agrarian reform program is founded on the right of farmers and regular farm workers, who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a share of the fruits thereof. To this end, the State shall encourage the just distribution of all agricultural lands, subject to the priorities and retention limits set forth in this Act, having taken into account ecological, developmental, and equity considerations, and subject to the payment of just compensation. The State shall respect the right of small landowners and shall provide incentives for voluntary land-sharing. (Emphasis supplied.)

[128] Memorandum of Renato Lalic, et al., p. 14.

Paragraph 2 of the above-quoted provision specifically mentions that "a more equitable distribution and ownership of land x x x shall be undertaken to provide farmers and farm workers with the **opportunity** to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands." Of note is the term "opportunity" which is defined as a favorable chance or opening offered by circumstances.[129] Considering this, by no stretch of imagination can said provision be construed as a guarantee in improving the lives of the FWBs. At best, it merely provides for a possibility or favorable chance of uplifting the economic status of the FWBs, which may or may not be attained.

Pertinently, improving the economic status of the FWBs is neither among the legal obligations of HLI under the SDP nor an imperative imposition by RA 6657 and DAO 10, a violation of which would justify discarding the stock distribution option. Nothing in that option agreement, law or department order indicates otherwise.

Significantly, HLI draws particular attention to its having paid its FWBs, during the regime of the SDP (1989-2005), some PhP 3 billion by way of salaries/wages and higher benefits exclusive of free hospital and medical benefits to their immediate family. And attached as Annex "G" to HLI's Memorandum is the certified true report of the finance manager of Jose Cojuangco & Sons Organizations-Tarlac Operations, captioned as "*HACIENDA LUISITA, INC. Salaries, Benefits and Credit Privileges (in Thousand Pesos) Since the Stock Option was Approved by PARC/CARP*," detailing what HLI gave their workers from 1989 to 2005. The sum total, as added up by the Court, yields the following numbers: Total Direct Cash Out (Salaries/Wages & Cash Benefits) = PhP 2,927,848; Total Non-Direct Cash Out (Hospital/Medical Benefits) = PhP 303,040. The cash out figures, as stated in the report, include the cost of homelots; the PhP 150 million or so representing 3% of the gross produce of the hacienda; and the PhP 37.5 million representing 3% from the proceeds of the sale of the 500-hectare

[129] LITTLE OXFORD DICTIONARY 442 (7th ed.).

converted lands. While not included in the report, HLI manifests having given the FWBs 3% of the PhP 80 million paid for the 80 hectares of land traversed by the SCTEX.[130] On top of these, it is worth remembering that the shares of stocks were given by HLI to the FWBs for free. Verily, the FWBs have benefited from the SDP.

To address urgings that the FWBs be allowed to disengage from the SDP as HLI has not anyway earned profits through the years, it cannot be over-emphasized that, as a matter of common business sense, no corporation could guarantee a profitable run all the time. As has been suggested, one of the key features of an SDP of a corporate landowner is the likelihood of the corporate vehicle not earning, or, worse still, losing money.[131]

The Court is fully aware that one of the criteria under DAO 10 for the PARC to consider the advisability of approving a stock distribution plan is the likelihood that the plan "**would result in increased income and greater benefits to [qualified beneficiaries] than if the lands were divided and distributed to them individually**."[132] But as aptly noted during the oral arguments, DAO 10 ought to have not, as it cannot, actually exact assurance of success on something that is subject to the will of man, the forces of nature or the inherent risky nature of business.[133] Just like in actual land distribution, an SDP cannot guarantee, as indeed the SDOA does not guarantee, a comfortable life for the FWBs. The Court can take judicial notice of the fact that there were many instances wherein after a farmworker beneficiary has been awarded with an agricultural land, he just subsequently sells it and is eventually left with nothing in the end.

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[130] *Rollo*, p. 3676.

[131] The SGV & Co.'s Independent Auditors Report on HLI for years ended 2009, 2008 and 2007 contains the following entries: "[T]he Company has suffered recurring losses from operations and has substantial negative working capital deficiency. The Company has continued to have no operations and experienced financial difficulties as a result of a strike staged by the labor union on November 6, 2004." *Rollo*, p. 3779, Annex "I" of HLI's Memorandum.

[132] Sec. 5(2).

[133] TSN, August 24, 2010, p. 125.

In all then, the onerous condition of the FWBs' economic status, their life of hardship, if that really be the case, can hardly be attributed to HLI and its SDP and provide a valid ground for the plan's revocation.

Neither does HLI's SDP, whence the DAR-attested SDOA/MOA is based, infringe Sec. 31 of RA 6657, albeit public respondents erroneously submit otherwise.

The provisions of the first paragraph of the adverted Sec. 31 are without relevance to the issue on the propriety of the assailed order revoking HLI's SDP, for the paragraph deals with the transfer of agricultural lands to the government, as a mode of CARP compliance, thus:

> SEC. 31. *Corporate Landowners.*—Corporate landowners may voluntarily transfer ownership over their agricultural landholdings to the Republic of the Philippines pursuant to Section 20 hereof or to qualified beneficiaries under such terms and conditions, consistent with this Act, as they may agree, subject to confirmation by the DAR.

The second and third paragraphs, with their sub-paragraphs, of Sec. 31 provide as follows:

> Upon certification by the DAR, corporations owning agricultural lands **may give their qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets**, under such terms and conditions as may be agreed upon by them. In no case shall the compensation received by the workers at the time the shares of stocks are distributed be reduced. x x x
>
> Corporations or associations which voluntarily divest a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries under this section shall be deemed to have complied with the provisions of this Act: Provided, That the following conditions are complied with:
>
> (a) In order to safeguard the right of beneficiaries who own shares of stocks to dividends and other financial benefits, the books of the corporation or association shall be subject to periodic audit by certified public accountants chosen by the beneficiaries;
>
> (b) Irrespective of the value of their equity in the corporation or association, the beneficiaries shall be assured of at least one (1)

> representative in the board of directors, or in a management or executive committee, if one exists, of the corporation or association;
>
> (c) Any shares acquired by such workers and beneficiaries shall have the same rights and features as all other shares; and
>
> (d) Any transfer of shares of stocks by the original beneficiaries shall be void *ab initio* unless said transaction is in favor of a qualified and registered beneficiary within the same corporation.

The mandatory minimum ratio of land-to-shares of stock supposed to be distributed or allocated to qualified beneficiaries, adverting to what Sec. 31 of RA 6657 refers to as that "**proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets**" had been observed.

Paragraph one (1) of the SDOA, which was based on the SDP, conforms to Sec. 31 of RA 6657. The stipulation reads:

> 1. The percentage of the value of the agricultural land of Hacienda Luisita (P196,630,000.00) in relation to the total assets (P590,554,220.00) transferred and conveyed to the SECOND PARTY is 33.296% that, under the law, is the proportion of the outstanding capital stock of the SECOND PARTY, which is P355,531,462.00 or 355,531,462 shares with a par value of P1.00 per share, that has to be distributed to the THIRD PARTY under the stock distribution plan, the said 33.296% thereof being P118,391,976.85 or 118,391,976.85 shares.

The appraised value of the agricultural land is PhP 196,630,000 and of HLI's other assets is PhP 393,924,220. The total value of HLI's assets is, therefore, PhP 590,554,220.[134] The percentage of the value of the agricultural lands (PhP 196,630,000) in relation to the total assets (PhP 590,554,220) is 33.296%, which represents the stockholdings of the 6,296 original qualified farmworker-beneficiaries (FWBs) in HLI. The total number of shares to be distributed to said qualified FWBs is 118,391,976.85 HLI shares. This was arrived at by getting 33.296% of the 355,531,462 shares which is the outstanding capital stock of HLI with a value of PhP 355,531,462. Thus, if we divide the 118,391,976.85 HLI shares by 6,296

[134] MOA, 4th Whereas clause.

FWBs, then each FWB is entitled to 18,804.32 HLI shares. These shares under the SDP are to be given to FWBs for free.

The Court finds that the determination of the shares to be distributed to the 6,296 FWBs strictly adheres to the formula prescribed by Sec. 31(b) of RA 6657.

Anent the requirement under Sec. 31(b) of the third paragraph, that the FWBs shall be assured of at least one (1) representative in the board of directors or in a management or executive committee irrespective of the value of the equity of the FWBs in HLI, the Court finds that the SDOA contained provisions making certain the FWBs' representation in HLI's governing board, thus:

> 5. Even if only a part or fraction of the shares earmarked for distribution will have been acquired from the FIRST PARTY and distributed to the THIRD PARTY, FIRST PARTY shall execute at the beginning of each fiscal year an irrevocable proxy, valid and effective for one (1) year, in favor of the farmworkers appearing as shareholders of the SECOND PARTY at the start of said year which will empower the THIRD PARTY or their representative to vote in stockholders' and board of directors' meetings of the SECOND PARTY convened during the year the entire 33.296% of the outstanding capital stock of the SECOND PARTY earmarked for distribution and thus be able to gain such number of seats in the board of directors of the SECOND PARTY that the whole 33.296% of the shares subject to distribution will be entitled to.

Also, no allegations have been made against HLI restricting the inspection of its books by accountants chosen by the FWBs; hence, the assumption may be made that there has been no violation of the statutory prescription under sub-paragraph (a) on the auditing of HLI's accounts.

Public respondents, however, submit that the distribution of the mandatory minimum ratio of land-to-shares of stock, referring to the 118,391,976.85 shares with par value of PhP 1 each, should have been made

in full within two (2) years from the approval of RA 6657, in line with the last paragraph of Sec. 31 of said law.[135]

Public respondents' submission is palpably erroneous. We have closely examined the last paragraph alluded to, with particular focus on the two-year period mentioned, and nothing in it remotely supports the public respondents' posture. In its pertinent part, said Sec. 31 provides:

> SEC. 31. Corporate Landowners x x x
>
> If within **two (2) years** from the approval of this Act, the [voluntary] land or stock transfer envisioned above is not made or realized **or the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act.** (Word in bracket and emphasis added.)

Properly viewed, the words "**two (2) years**" clearly refer to the period within which the corporate landowner, to avoid land transfer as a mode of CARP coverage under RA 6657, is to avail of the stock distribution option or to have the SDP approved. The HLI secured approval of its SDP in November 1989, well within the two-year period reckoned from June 1988 when RA 6657 took effect.

Having hurdled the alleged breach of the agrarian reform policy under Sec. 2 of RA 6657 as well as the statutory issues, We shall now delve into what PARC and respondents deem to be other instances of violation of DAO 10 and the SDP.

On the Conversion of Lands

Contrary to the almost parallel stance of the respondents, keeping Hacienda Luisita unfragmented is also not among the imperative impositions by the SDP, RA 6657, and DAO 10.

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[135] Memorandum of public respondents, p. 41.

The Terminal Report states that the proposed distribution plan submitted in 1989 to the PARC effectively assured the intended stock beneficiaries that the physical integrity of the farm shall remain inviolate. Accordingly, the Terminal Report and the PARC-assailed resolution would take HLI to task for securing approval of the conversion to non-agricultural uses of 500 hectares of the hacienda. In not too many words, the Report and the resolution view the conversion as an infringement of Sec. 5(a) of DAO 10 which reads: "a. that the continued operation of the corporation with its agricultural land intact and unfragmented is viable with potential for growth and increased profitability."

The PARC is wrong.

In the first place, Sec. 5(a)—just like the succeeding Sec. 5(b) of DAO 10 on increased income and greater benefits to qualified beneficiaries––is but one of the stated criteria to guide PARC in deciding on whether or not to accept an SDP. Said Sec. 5(a) does not exact from the corporate landowner-applicant the undertaking to keep the farm intact and unfragmented *ad infinitum.* And there is logic to HLI's stated observation that the key phrase in the provision of Sec. 5(a) is "viability of corporate operations": "[w]hat is thus required is not the agricultural land remaining intact x x x but the viability of the corporate operations with its agricultural land being intact and unfragmented. Corporate operation may be viable even if the corporate agricultural land does not remain intact or [un]fragmented."[136]

It is, of course, anti-climactic to mention that DAR viewed the conversion as not violative of any issuance, let alone undermining the viability of Hacienda Luisita's operation, as the DAR Secretary approved the land conversion applied for and its disposition via his Conversion Order dated August 14, 1996 pursuant to Sec. 65 of RA 6657 which reads:

[136] HLI Consolidated Reply and Opposition, p. 65.

> Sec. 65. *Conversion of Lands*.—After the lapse of five years from its award when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR upon application of the beneficiary or landowner with due notice to the affected parties, and subject to existing laws, may authorize the x x x conversion of the land and its dispositions. x x x

On the 3% Production Share

On the matter of the alleged failure of HLI to comply with sharing the 3% of the gross production sales of the hacienda and pay dividends from profit, the entries in its financial books tend to indicate compliance by HLI of the profit-sharing equivalent to 3% of the gross sales from the production of the agricultural land on top of (a) the salaries and wages due FWBs as employees of the company and (b) the 3% of the gross selling price of the converted land and that portion used for the SCTEX. A plausible evidence of compliance or non-compliance, as the case may be, could be the books of account of HLI. Evidently, the cry of some groups of not having received their share from the gross production sales has not adequately been validated on the ground by the Special Task Force.

Indeed, factual findings of administrative agencies are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when they are affirmed by the CA.[137] However, such rule is not absolute. One such exception is when the findings of an administrative agency are conclusions without citation of specific evidence on which they are based,[138] such as in this particular instance. As culled from its Terminal Report, it would appear that the Special Task Force rejected HLI's claim of compliance on the basis of this ratiocination:

> • The Task Force position**:** Though, allegedly, the Supervisory Group receives the 3% gross production share and that others alleged that they received 30 million pesos still others maintain that they have not

[137] *Herida v. F&C Pawnshop and Jewelry Store*, G.R. No. 172601, April 16, 2009, 585 SCRA 395, 401.

[138] *Bascos, Jr. v. Taganahan*, G.R. No. 180666, February 18, 2009, 579 SCRA 653, 674-675.

> received anything yet. Item No. 4 of the MOA is clear and must be followed. There is a distinction between the **total gross sales** from the **production of the land** and the **proceeds** from the **sale of the land**. The former refers to the fruits/yield of the agricultural land while the latter is the land itself. The phrase "the beneficiaries are entitled every year to an amount approximately equivalent to 3% would only be feasible if the subject is the produce since there is at least one harvest per year, while such is not the case in the sale of the agricultural land. This negates then the claim of HLI that, all that the FWBs can be entitled to, if any, is only 3% of the purchase price of the converted land.
>
> • Besides, the ***Conversion Order*** dated 14 August 1996 provides that "*the benefits, wages and the like, presently received by the FWBs shall not in any way be reduced or adversely affected.* ***Three percent of the gross selling price of the sale of the converted land shall be awarded to the beneficiaries of the SDO****."* The 3% gross production share then is different from the 3% proceeds of the sale of the converted land and, with more reason, the 33% share being claimed by the FWBs as part owners of the Hacienda, should have been given the FWBs, as stockholders, and to which they could have been entitled if only the land were acquired and redistributed to them under the CARP.
>
> x x x x
>
> • The FWBs do not receive any other benefits under the MOA except the aforementioned [(*viz*: shares of stocks (partial), 3% gross production sale (not all) and homelots (not all)].

Judging from the above statements, the Special Task Force is at best silent on whether HLI has failed to comply with the 3% production-sharing obligation or the 3% of the gross selling price of the converted land and the SCTEX lot. In fact, it admits that the FWBs, though not all, have received their share of the gross production sales and in the sale of the lot to SCTEX. At most, then, HLI had complied substantially with this SDP undertaking and the conversion order. To be sure, this slight breach would not justify the setting to naught by PARC of the approval action of the earlier PARC. Even in contract law, rescission, predicated on violation of reciprocity, will not be permitted for a slight or casual breach of contract; rescission may be had only for such breaches that are substantial and fundamental as to defeat the object of the parties in making the agreement.[139]

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[139] *Cannu v. Galang*, G.R. No. 139523, May 26, 2005, 459 SCRA 80, 93-94; *Ang v. Court of Appeals*, G.R. No.80058, February 13, 1989, 170 SCRA 286.

Despite the foregoing findings, the revocation of the approval of the SDP is not without basis as shown below.

On Titles to Homelots

Under RA 6657, the distribution of homelots is required only for corporations or business associations owning or operating farms which opted for land distribution. Sec. 30 of RA 6657 states:

> SEC. 30. *Homelots and Farmlots for Members of Cooperatives*.—The individual members of the cooperatives or corporations mentioned in the preceding section shall be provided with homelots and small farmlots for their family use, to be taken from the land owned by the cooperative or corporation.

The "preceding section" referred to in the above-quoted provision is as follows:

> SEC. 29. *Farms Owned or Operated by Corporations or Other Business Associations.*—In the case of farms owned or operated by corporations or other business associations, the following rules shall be observed by the PARC.
>
> In general, lands shall be distributed directly to the individual worker-beneficiaries.
>
> In case it is not economically feasible and sound to divide the land, then it shall be owned collectively by the worker-beneficiaries who shall form a workers' cooperative or association which will deal with the corporation or business association. Until a new agreement is entered into by and between the workers' cooperative or association and the corporation or business association, any agreement existing at the time this Act takes effect between the former and the previous landowner shall be respected by both the workers' cooperative or association and the corporation or business association.

Noticeably, the foregoing provisions do not make reference to corporations which opted for stock distribution under Sec. 31 of RA 6657. Concomitantly, said corporations are not obliged to provide for it except by stipulation, as in this case.

Under the SDP, HLI undertook to "subdivide and allocate for free and without charge among the qualified family-beneficiaries x x x residential or homelots of not more than 240 sq. m. each, with each family beneficiary being assured of receiving and owning a homelot in the barrio or barangay where it actually resides," "within a reasonable time."

More than sixteen (16) years have elapsed from the time the SDP was approved by PARC, and yet, it is still the contention of the FWBs that not all was given the 240-square meter homelots and, of those who were already given, some still do not have the corresponding titles.

During the oral arguments, HLI was afforded the chance to refute the foregoing allegation by submitting proof that the FWBs were already given the said homelots:

> Justice Velasco: x x x There is also an allegation that the farmer beneficiaries, the qualified family beneficiaries were not given the 240 square meters each. So, can you also [prove] that the qualified family beneficiaries were already provided the 240 square meter homelots.
>
> Atty. Asuncion: We will, your Honor please.[140]

Other than the financial report, however, no other substantial proof showing that all the qualified beneficiaries have received homelots was submitted by HLI. Hence, this Court is constrained to rule that HLI has not yet fully complied with its undertaking to distribute homelots to the FWBs under the SDP.

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[140] TSN, August 18, 2010, p. 58.

On "Man Days" and the Mechanics of Stock Distribution

In our review and analysis of par. 3 of the SDOA on the mechanics and timelines of stock distribution, We find that it **violates** two (2) provisions of DAO 10. Par. 3 of the SDOA states:

> 3. At the end of each fiscal year, for a period of 30 years, the SECOND PARTY [HLI] shall arrange with the FIRST PARTY [TDC] the acquisition and distribution to the THIRD PARTY [FWBs] on the basis of number of days worked and at no cost to them of one-thirtieth (1/30) of 118,391,976.85 shares of the capital stock of the SECOND PARTY that are presently owned and held by the FIRST PARTY, until such time as the entire block of 118,391,976.85 shares shall have been completely acquired and distributed to the THIRD PARTY.

Based on the above-quoted provision, the distribution of the shares of stock to the FWBs, albeit not entailing a cash out from them, is contingent on the number of "man days," that is, the number of days that the FWBs have worked during the year. This formula deviates from Sec. 1 of DAO 10, which decrees the distribution of equal number of shares to the FWBs as the minimum ratio of shares of stock for purposes of compliance with Sec. 31 of RA 6657. As stated in Sec. 4 of DAO 10:

> Section 4. *Stock Distribution Plan.*—The [SDP] submitted by the corporate landowner-applicant shall provide for **the distribution of an equal number of shares of the same class and value, with the same rights and features as all other shares, to each of the qualified beneficiaries**. This distribution plan in all cases, shall be at least the **minimum ratio** for purposes of compliance with Section 31 of R.A. No. 6657.
>
> **On top of the minimum ratio** provided under Section 3 of this Implementing Guideline, the corporate landowner-applicant may adopt **additional stock distribution schemes taking into account factors such as rank, seniority, salary, position and other circumstances which may be deemed desirable as a matter of sound company policy**. (Emphasis supplied.)

The above proviso gives two (2) sets or categories of shares of stock which a qualified beneficiary can acquire from the corporation under the SDP. The first pertains, as earlier explained, to the mandatory minimum ratio of shares of stock to be distributed to the FWBs in compliance with Sec.

31 of RA 6657. This minimum ratio contemplates of that "**proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets**."[141] It is this set of shares of stock which, in line with Sec. 4 of DAO 10, is supposed to be allocated "for the distribution of an equal number of shares of stock of the same class and value, with the same rights and features as all other shares, to each of the qualified beneficiaries."

On the other hand, the second set or category of shares partakes of a gratuitous extra grant, meaning that this set or category constitutes an augmentation share/s that the corporate landowner may give under an additional stock distribution scheme, taking into account such variables as rank, seniority, salary, position and like factors which the management, in the exercise of its sound discretion, may deem desirable.[142]

Before anything else, it should be stressed that, at the time PARC approved HLI's SDP, HLI recognized **6,296** individuals as qualified FWBs. And under the 30-year stock distribution program envisaged under the plan, FWBs who came in after 1989, new FWBs in fine, may be accommodated, as they appear to have in fact been accommodated as evidenced by their receipt of HLI shares.

Now then, by providing that the number of shares of the original 1989 FWBs shall depend on the number of "man days," HLI violated the afore-quoted rule on stock distribution and effectively deprived the FWBs of equal shares of stock in the corporation, for, in net effect, these 6,296 qualified FWBs, who theoretically had given up their rights to the land that could have been distributed to them, suffered a dilution of their due share entitlement. As has been observed during the oral arguments, HLI has

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[141] RA 6657, Sec. 31.
[142] DAO 10, s. 1988, Sec. 1.

chosen to use the shares earmarked for farmworkers as reward system chips to water down the shares of the original 6,296 FWBs.[143] Particularly:

> Justice Abad: If the SDOA did not take place, the other thing that would have happened is that there would be CARP?
>
> Atty. Dela Merced: Yes, Your Honor.
>
> Justice Abad: That's the only point I want to know x x x. Now, but they chose to enter SDOA instead of placing the land under CARP. And for that reason those who would have gotten their shares of the land actually gave up their rights to this land in place of the shares of the stock, is that correct?
>
> Atty. Dela Merced: It would be that way, Your Honor.
>
> Justice Abad: Right now, also the government, in a way, gave up its right to own the land because that way the government takes own [sic] the land and distribute it to the farmers and pay for the land, is that correct?
>
> Atty. Dela Merced: Yes, Your Honor.
>
> Justice Abad: And then you gave thirty-three percent (33%) of the shares of HLI to the farmers at that time that numbered x x x those who signed five thousand four hundred ninety eight (5,498) beneficiaries, is that correct?
>
> Atty. Dela Merced: Yes, Your Honor.
>
> Justice Abad: But later on, after assigning them their shares, some workers came in from 1989, 1990, 1991, 1992 and the rest of the years that you gave additional shares who were not in the original list of owners?
>
> Atty. Dela Merced: Yes, Your Honor.
>
> Justice Abad: Did those new workers give up any right that would have belong to them in 1989 when the land was supposed to have been placed under CARP?
>
> Atty. Dela Merced: If you are talking or referring… (interrupted)
>
> Justice Abad: None! You tell me. None. They gave up no rights to land?
>
> Atty. Dela Merced: They did not do the same thing as we did in 1989, Your Honor.
>
> Justice Abad: No, if they were not workers in 1989 what land did they give up? None, if they become workers later on.
>
> Atty. Dela Merced: None, Your Honor, I was referring, Your Honor, to the original… (interrupted)

[143] TSN, August 18, 2010, p. 106.

> Justice Abad: So why is it that the rights of those who gave up their lands would be diluted, because the company has chosen to use the shares as reward system for new workers who come in? It is not that the new workers, in effect, become just workers of the corporation whose stockholders were already fixed. The TADECO who has shares there about sixty six percent (66%) and the five thousand four hundred ninety eight (5,498) farmers at the time of the SDOA? Explain to me. Why, why will you x x x what right or where did you get that right to use this shares, to water down the shares of those who should have been benefited, and to use it as a reward system decided by the company?[144]

From the above discourse, it is clear as day that the original 6,296 FWBs, who were qualified beneficiaries at the time of the approval of the SDP, suffered from watering down of shares. As determined earlier, each original FWB is entitled to 18,804.32 HLI shares. The original FWBs got less than the guaranteed 18,804.32 HLI shares per beneficiary, because the acquisition and distribution of the HLI shares were based on "man days" or "number of days worked" by the FWB in a year's time. As explained by HLI, a beneficiary needs to work for at least 37 days in a fiscal year before he or she becomes entitled to HLI shares. If it falls below 37 days, the FWB, unfortunately, does not get any share at year end. The number of HLI shares distributed varies depending on the number of days the FWBs were allowed to work in one year. Worse, HLI hired farmworkers in addition to the original 6,296 FWBs, such that, as indicated in the Compliance dated August 2, 2010 submitted by HLI to the Court, the total number of farmworkers of HLI as of said date stood at 10,502. All these farmworkers, which include the original 6,296 FWBs, were given shares out of the 118,931,976.85 HLI shares representing the 33.296% of the total outstanding capital stock of HLI. Clearly, the minimum individual allocation of each original FWB of 18,804.32 shares was diluted as a result of the use of "man days" and the hiring of additional farmworkers.

Going into another but related matter, par. 3 of the SDOA expressly providing for a 30-year timeframe for HLI-to-FWBs stock transfer is an arrangement contrary to what Sec. 11 of DAO 10 prescribes. Said Sec. 11 provides for the implementation of the approved stock distribution plan

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[144] Id. at 103-106.

within three (3) months from receipt by the corporate landowner of the approval of the plan by PARC. In fact, based on the said provision, the transfer of the shares of stock in the names of the qualified FWBs should be recorded in the stock and transfer books and must be submitted to the SEC within sixty (60) days from implementation. As stated:

> Section 11. *Implementation/Monitoring of Plan.*—The approved stock distribution plan shall be **implemented within three (3) months from receipt by the corporate landowner-applicant of the approval thereof by the PARC**, and the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded in stock and transfer books and **submitted to the Securities and Exchange Commission (SEC) within sixty (60) days from the said implementation of the stock distribution plan.** (Emphasis supplied.)

It is evident from the foregoing provision that the implementation, that is, the distribution of the shares of stock to the FWBs, must be made within three (3) months from receipt by HLI of the approval of the stock distribution plan by PARC. While neither of the clashing parties has made a compelling case of the thrust of this provision, the Court is of the view and so holds that the intent is to compel the corporate landowner to complete, not merely initiate, the transfer process of shares within that three-month timeframe. Reinforcing this conclusion is the 60-day stock transfer recording (with the SEC) requirement reckoned from the implementation of the SDP.

To the Court, there is a purpose, which is at once discernible as it is practical, for the three-month threshold. Remove this timeline and the corporate landowner can veritably evade compliance with agrarian reform by simply deferring to absurd limits the implementation of the stock distribution scheme.

The argument is urged that the thirty (30)-year distribution program is justified by the fact that, under Sec. 26 of RA 6657, payment by beneficiaries of land distribution under CARP shall be made in thirty (30) annual amortizations. To HLI, said section provides a justifying dimension to its 30-year stock distribution program.

HLI's reliance on Sec. 26 of RA 6657, quoted in part below, is obviously misplaced as the said provision clearly deals with land distribution.

> SEC. 26. *Payment by Beneficiaries*.—Lands awarded pursuant to this Act shall be paid for by the beneficiaries to the LBP in thirty (30) annual amortizations x x x.

Then, too, the ones obliged to pay the LBP under the said provision are the beneficiaries. On the other hand, in the instant case, aside from the fact that what is involved is stock distribution, it is the corporate landowner who has the obligation to distribute the shares of stock among the FWBs.

Evidently, the land transfer beneficiaries are given thirty (30) years within which to pay the cost of the land thus awarded them to make it less cumbersome for them to pay the government. To be sure, the reason underpinning the 30-year accommodation does not apply to corporate landowners in distributing shares of stock to the qualified beneficiaries, as the shares may be issued in a much shorter period of time.

Taking into account the above discussion, the revocation of the SDP by PARC should be upheld for violating DAO 10. It bears stressing that under Sec. 49 of RA 6657, the PARC and the DAR have the power to issue rules and regulations, substantive or procedural. Being a product of such rule-making power, DAO 10 has the force and effect of law and must be duly complied with.[145] The PARC is, therefore, correct in revoking the SDP. Consequently, the PARC Resolution No. 89-12-2 dated November 21, l989 approving the HLI's SDP is nullified and voided.

III.

We now resolve the petitions-in-intervention which, at bottom, uniformly pray for the exclusion from the coverage of the assailed PARC

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[145] See *Abakada Guro Party List v. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251, 288-289.

resolution those portions of the converted land within Hacienda Luisita which RCBC and LIPCO acquired by purchase.

Both contend that they are innocent purchasers for value of portions of the converted farm land. Thus, their plea for the exclusion of that portion from PARC Resolution 2005-32-01, as implemented by a DAR-issued Notice of Coverage dated January 2, 2006, which called for mandatory CARP acquisition coverage of lands subject of the SDP.

To restate the antecedents, after the conversion of the 500 hectares of land in Hacienda Luisita, HLI transferred the 300 hectares to Centennary, while ceding the remaining 200-hectare portion to LRC. Subsequently, LIPCO purchased the entire three hundred (300) hectares of land from Centennary for the purpose of developing the land into an industrial complex.[146] Accordingly, the TCT in Centennary's name was canceled and a new one issued in LIPCO's name. Thereafter, said land was subdivided into two (2) more parcels of land. Later on, LIPCO transferred about 184 hectares to RCBC by way of *dacion en pago*, by virtue of which TCTs in the name of RCBC were subsequently issued.

Under Sec. 44 of PD 1529 or the *Property Registration Decree*, "every registered owner receiving a certificate of title in pursuance of a decree of registration and every subsequent purchaser of registered land taking a certificate of title for value and in *good faith* shall hold the same free from all encumbrances except those noted on the certificate and enumerated therein."[147]

It is settled doctrine that one who deals with property registered under the Torrens system need not go beyond the four corners of, but can rely on what appears on, the title. He is charged with notice only of such burdens and claims as are annotated on the title. This principle admits of certain

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[146] *Rollo*, p. 1362.
[147] *Lu v. Manipon*, G.R. No. 147072, May 7, 2002, 381 SCRA 788, 796.

exceptions, such as when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry, or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation.[148] A higher level of care and diligence is of course expected from banks, their business being impressed with public interest.[149]

Millena v. Court of Appeals describes a purchaser in good faith in this wise:

> x x x **A purchaser in good faith is one who buys property of another, without notice that some other person has a right to, or interest in, such property at the time of such purchase, or before he has notice of the claim or interest of some other persons in the property.** Good faith, or the lack of it, is in the final analysis a question of intention; but in ascertaining the intention by which one is actuated on a given occasion, we are necessarily controlled by the evidence as to the conduct and outward acts by which alone the inward motive may, with safety, be determined. Truly, good faith is not a visible, tangible fact that can be seen or touched, but rather a state or condition of mind which can only be judged by actual or fancied tokens or signs. Otherwise stated, good faith x x x refers to the state of mind which is manifested by the acts of the individual concerned.[150] (Emphasis supplied.)

In fine, there are two (2) requirements before one may be considered a purchaser in good faith, namely: (1) that the purchaser buys the property of another without notice that some other person has a right to or interest in such property; and (2) that the purchaser pays a full and fair price for the property at the time of such purchase or before he or she has notice of the claim of another.

It can rightfully be said that both LIPCO and RCBC are—based on the above requirements and with respect to the adverted transactions of the converted land in question—purchasers in good faith for value entitled to the benefits arising from such status.

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[148] *Sandoval v. Court of Appeals*, G.R. No. 106657, August 1, 1996, 260 SCRA 283, 295.
[149] *Cavite Development Bank v. Lim*, G.R. No. 131679, February 1, 2000, 324 SCRA 346, 359..
[150] G.R. No. 127797, January 31, 2000, 324 SCRA 126, 136-137.

First, at the time LIPCO purchased the entire three hundred (300) hectares of industrial land, there was no notice of any supposed defect in the title of its transferor, Centennary, or that any other person has a right to or interest in such property. In fact, at the time LIPCO acquired said parcels of land, only the following annotations appeared on the TCT in the name of Centennary: the Secretary's Certificate in favor of Teresita Lopa, the Secretary's Certificate in favor of Shintaro Murai, and the conversion of the property from agricultural to industrial and residential use.[151]

The same is true with respect to RCBC. At the time it acquired portions of Hacienda Luisita, only the following general annotations appeared on the TCTs of LIPCO: the Deed of Restrictions, limiting its use solely as an industrial estate; the Secretary's Certificate in favor of Koji Komai and Kyosuke Hori; and the Real Estate Mortgage in favor of RCBC to guarantee the payment of PhP 300 million.

It cannot be claimed that RCBC and LIPCO acted in bad faith in acquiring the lots that were previously covered by the SDP. Good faith "consists in the possessor's belief that the person from whom he received it was the owner of the same and could convey his title. Good faith requires a well-founded belief that the person from whom title was received was himself the owner of the land, with the right to convey it. There is good faith where there is an honest intention to abstain from taking any unconscientious advantage from another."[152] It is the opposite of fraud.

To be sure, intervenor RCBC and LIPCO knew that the lots they bought were subjected to CARP coverage by means of a stock distribution plan, as the DAR conversion order was annotated at the back of the titles of the lots they acquired. However, they are of the honest belief that the subject lots were validly converted to commercial or industrial purposes and

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[151] *Rollo*, p. 1568.

[152] *Duran v. Intermediate Appellate Court*, No. L-64159, September 10, 1985, 138 SCRA 489, 494.

for which said lots were taken out of the CARP coverage subject of PARC Resolution No. 89-12-2 and, hence, can be legally and validly acquired by them. After all, Sec. 65 of RA 6657 explicitly allows conversion and disposition of agricultural lands previously covered by CARP land acquisition "after the lapse of five (5) years from its award when the land ceases to be economically feasible and sound for agricultural purposes or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes." Moreover, DAR notified all the affected parties, more particularly the FWBs, and gave them the opportunity to comment or oppose the proposed conversion. DAR, after going through the necessary processes, granted the conversion of 500 hectares of Hacienda Luisita pursuant to its primary jurisdiction under Sec. 50 of RA 6657 to determine and adjudicate agrarian reform matters and its original exclusive jurisdiction over all matters involving the implementation of agrarian reform. The DAR conversion order became final and executory after none of the FWBs interposed an appeal to the CA. In this factual setting, RCBC and LIPCO purchased the lots in question on their honest and well-founded belief that the previous registered owners could legally sell and convey the lots though these were previously subject of CARP coverage. Ergo, RCBC and LIPCO acted in good faith in acquiring the subject lots.

And *second*, both LIPCO and RCBC purchased portions of Hacienda Luisita for value. Undeniably, LIPCO acquired 300 hectares of land from Centennary for the amount of PhP 750 million pursuant to a Deed of Sale dated July 30, 1998.[153] On the other hand, in a Deed of Absolute Assignment dated November 25, 2004, LIPCO conveyed portions of Hacienda Luisita in favor of RCBC by way of *dacion en pago* to pay for a loan of PhP 431,695,732.10.

As *bona fide* purchasers for value, both LIPCO and RCBC have acquired rights which cannot just be disregarded by DAR, PARC or even by this Court. As held in *Spouses Chua v. Soriano*:

[153] *Rollo*, pp. 1499-1509.

> With the property in question having already passed to the hands of purchasers in good faith, it is now of no moment that some irregularity attended the issuance of the SPA, consistent with our pronouncement in *Heirs of Spouses Benito Gavino and Juana Euste v. Court of Appeals*, to wit:
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> > x x x the general rule that the direct result of a previous void contract cannot be valid, is inapplicable in this case as it will directly contravene the Torrens system of registration. **Where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property, the court cannot disregard such rights and order the cancellation of the certificate.** The effect of such outright cancellation will be to impair public confidence in the certificate of title. The sanctity of the Torrens system must be preserved; otherwise, everyone dealing with the property registered under the system will have to inquire in every instance as to whether the title had been regularly or irregularly issued, contrary to the evident purpose of the law.
>
> **Being purchasers in good faith, the Chuas already acquired valid title to the property. A purchaser in good faith holds an indefeasible title to the property and he is entitled to the protection of the law.**[154] x x x (Emphasis supplied.)

To be sure, the practicalities of the situation have to a point influenced Our disposition on the fate of RCBC and LIPCO. After all, the Court, to borrow from *Association of Small Landowners in the Philippines, Inc.*,[155] is not a "cloistered institution removed" from the realities on the ground. To note, the approval and issuances of both the national and local governments showing that certain portions of Hacienda Luisita have effectively ceased, legally and physically, to be agricultural and, therefore, no longer CARPable are a matter of fact which cannot just be ignored by the Court and the DAR. Among the approving/endorsing issuances:[156]

(a) Resolution No. 392 dated 11 December 1996 of the Sangguniang Bayan of Tarlac favorably endorsing the 300-hectare industrial estate project of LIPCO;

(b) BOI Certificate of Registration No. 96-020 dated 20 December 1996 issued in accordance with the Omnibus Investments Code of 1987;

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[154] G.R. No. 150066, April 13, 2007, 521 SCRA 68, 82-83.
[155] Supra note 2.
[156] Memorandum of RCBC, p. 52.

(c) PEZA Certificate of Board Resolution No. 97-202 dated 27 June 1997, approving LIPCO's application for a mixed ecozone and proclaiming the three hundred (300) hectares of the industrial land as a Special Economic Zone;

(d) Resolution No. 234 dated 08 August 1997 of the Sangguniang Bayan of Tarlac, approving the Final Development Permit for the Luisita Industrial Park II Project;

(e) Development Permit dated 13 August 1997 for the proposed Luisita Industrial Park II Project issued by the Office of the Sangguniang Bayan of Tarlac;[157]

(f) DENR Environmental Compliance Certificate dated 01 October 1997 issued for the proposed project of building an industrial complex on three hundred (300) hectares of industrial land;[158]

(g) Certificate of Registration No. 00794 dated 26 December 1997 issued by the HLURB on the project of Luisita Industrial Park II with an area of three million (3,000,000) square meters;[159]

(h) License to Sell No. 0076 dated 26 December 1997 issued by the HLURB authorizing the sale of lots in the Luisita Industrial Park II;

(i) Proclamation No. 1207 dated 22 April 1998 entitled "Declaring Certain Parcels of Private Land in Barangay San Miguel, Municipality of Tarlac, Province of Tarlac, as a Special Economic Zone pursuant to Republic Act No. 7916," designating the Luisita Industrial Park II consisting of three hundred hectares (300 has.) of industrial land as a Special Economic Zone; and

(j) Certificate of Registration No. EZ-98-05 dated 07 May 1998 issued by the PEZA, stating that pursuant to Presidential Proclamation No. 1207 dated 22 April 1998 and Republic Act No. 7916, LIPCO has been registered as an Ecozone Developer/Operator of Luisita Industrial Park II located in San Miguel, Tarlac, Tarlac.

While a mere reclassification of a covered agricultural land or its inclusion in an economic zone does not automatically allow the corporate or

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[157] Id.
[158] Id. at 52-53.
[159] Id at 53.

individual landowner to change its use,[160] the reclassification process is a *prima facie* indicium that the land has ceased to be economically feasible and sound for agricultural uses. And if only to stress, DAR Conversion Order No. 030601074-764-(95) issued in 1996 by then DAR Secretary Garilao had effectively converted 500 hectares of hacienda land from agricultural to industrial/commercial use and authorized their disposition.

In relying upon the above-mentioned approvals, proclamation and conversion order, both RCBC and LIPCO cannot be considered at fault for believing that certain portions of Hacienda Luisita are industrial/commercial lands and are, thus, outside the ambit of CARP. The PARC, and consequently DAR, gravely abused its discretion when it placed LIPCO's and RCBC's property which once formed part of Hacienda Luisita under the CARP compulsory acquisition scheme via the assailed Notice of Coverage.

As regards the 80.51-hectare land transferred to the government for use as part of the SCTEX, this should also be excluded from the compulsory agrarian reform coverage considering that the transfer was consistent with the government's exercise of the power of eminent domain[161] and none of the parties actually questioned the transfer.

While We affirm the revocation of the SDP on Hacienda Luisita subject of PARC Resolution Nos. 2005-32-01 and 2006-34-01, the Court cannot close its eyes to certain "operative facts" that had occurred in the interim. Pertinently, the "operative fact" doctrine realizes that, in declaring a **law** or **executive action** null and void, or, by extension, no longer without force and effect, undue harshness and resulting unfairness must be avoided. This is as it should realistically be, since rights might have accrued in favor of natural or juridical persons and obligations justly incurred in the

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[160] *Roxas & Company, Inc. v. DAMBA-NFSW*, G.R. Nos. 149548, etc., December 4, 2009, 607 SCRA 33, 56.

[161] RA, 8974, Sec. 6.

See <http://www.congress.gov.ph/committees/commnews/commnews_det.php?newsid=1231> (last visited June 23, 2011).

meantime.[162] The actual existence of a statute or executive act is, prior to such a determination, an operative fact and may have consequences which cannot justly be ignored; the past cannot always be erased by a new judicial declaration.[163]

The oft-cited *De Agbayani v. Philippine National Bank*[164] discussed the effect to be given to a legislative or executive act subsequently declared invalid:

> x x x It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the government organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.
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> In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination of [unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects,—with respect to particular relations, individual and corporate, and particular conduct, private and official." x x x

Given the above perspective and considering that more than two decades had passed since the PARC's approval of the HLI's SDP, in conjunction with numerous activities performed in good faith by HLI, and the reliance by the FWBs on the legality and validity of the PARC-approved SDP, perforce, certain rights of the parties, more particularly the FWBs,

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[162] *Manila Motor Co., Inc. v. Flores*, 99 Phil. 738, 739 (1956).

[163] *Fernandez v. P. Cuerva & Co.*, No. L-21114, November 28, 1967, 21 SCRA 1095, 1104; citing *Chicot County Drainage Dist. V. Baxter States Bank* (1940) 308 US 371.

[164] No. L-23127, April 29, 1971, 38 SCRA 429, 434-435.

have to be respected pursuant to the application in a general way of the operative fact doctrine.

A view, however, has been advanced that the operative fact doctrine is of minimal or altogether without relevance to the instant case as it applies only in considering the effects of a declaration of unconstitutionality of a statute, and not of a declaration of nullity of a contract. This is incorrect, for this view failed to consider is that it is NOT the SDOA dated May 11, 1989 which was revoked in the instant case. Rather, it is PARC's approval of the HLI's Proposal for Stock Distribution under CARP which embodied the SDP that was nullified.

A recall of the antecedent events would show that on May 11, 1989, Tadeco, HLI, and the qualified FWBs executed the SDOA. This agreement provided the basis and mechanics of the SDP that was subsequently proposed and submitted to DAR for approval. It was only after its review that the PARC, through then Sec. Defensor-Santiago, issued the assailed Resolution No. 89-12-2 approving the SDP. Considerably, it is not the SDOA which gave legal force and effect to the stock distribution scheme but instead, it is the approval of the SDP under the PARC Resolution No. 89-12-2 that gave it its validity.

The above conclusion is bolstered by the fact that in Sec. Pangandaman's recommendation to the PARC Excom, what he proposed is the recall/revocation of PARC Resolution No. 89-12-2 approving HLI's SDP, and not the revocation of the SDOA. Sec. Pangandaman's recommendation was favorably endorsed by the PARC Validation Committee to the PARC Excom, and these recommendations were referred to in the assailed Resolution No. 2005-32-01. Clearly, it is not the SDOA which was made the basis for the implementation of the stock distribution scheme.

That the operative fact doctrine squarely applies to executive acts—in this case, the approval by PARC of the HLI proposal for stock distribution—is well-settled in our jurisprudence. In *Chavez v. National Housing Authority*,[165] We held:

> Petitioner postulates that the "operative fact" doctrine is inapplicable to the present case because it is an equitable doctrine which could not be used to countenance an inequitable result that is contrary to its proper office.
>
> On the other hand, the petitioner Solicitor General argues that the existence of the various agreements implementing the SMDRP is an operative fact that can no longer be disturbed or simply ignored, citing *Rieta v. People of the Philippines*.
>
> The argument of the Solicitor General is meritorious.
>
> The "operative fact" doctrine is embodied in *De Agbayani v. Court of Appeals*, wherein it is stated that a legislative or **executive act**, prior to its being declared as unconstitutional by the courts, is valid and must be complied with, thus:
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> xxx xxx xxx
>
> This doctrine was reiterated in the more recent case of *City of Makati v. Civil Service Commission*, wherein we ruled that:
>
> > Moreover, we certainly cannot nullify the City Government's order of suspension, as we have no reason to do so, much less retroactively apply such nullification to deprive private respondent of a compelling and valid reason for not filing the leave application. **For as we have held, a void act though in law a mere scrap of paper nonetheless confers legitimacy upon past acts or omissions done in reliance thereof.** Consequently, the existence of a statute or **executive order** prior to its being adjudged void is an operative fact to which legal consequences are attached. It would indeed be ghastly unfair to prevent private respondent from relying upon the order of suspension in lieu of a formal leave application. (Citations omitted; Emphasis supplied.)

The applicability of the operative fact doctrine to executive acts was further explicated by this Court in *Rieta v. People*,[166] thus:

> Petitioner contends that his arrest by virtue of Arrest Search and Seizure Order (ASSO) No. 4754 was invalid, as the law upon which it was predicated — General Order No. 60, issued by then President Ferdinand E.

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[165] G.R. No. 164527, August 15, 2007.
[166] G.R. No. 147817, August 12, 2004.

Marcos — was subsequently declared by the Court, in *Tañada v. Tuvera*, 33 to have no force and effect. Thus, he asserts, any evidence obtained pursuant thereto is inadmissible in evidence.

We do not agree. In *Tañada*, the Court addressed the possible effects of its declaration of the invalidity of various presidential issuances. Discussing therein how such a declaration might affect acts done on a presumption of their validity, the Court said:

> ". . .. In similar situations in the past this Court had taken the pragmatic and realistic course set forth in *Chicot County Drainage District vs. Baxter Bank* to wit:
>
> > 'The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. . . . It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to [the determination of its invalidity], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects — with respect to particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.'
>
> xxx xxx xxx
>
> "Similarly, the implementation/enforcement of presidential decrees prior to their publication in the Official Gazette is 'an operative fact which may have consequences which cannot be justly ignored. The past cannot always be erased by a new judicial declaration . . . that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.'"

> The Chicot doctrine cited in *Tañada* advocates that, prior to the nullification of a statute, there is an imperative necessity of taking into account its actual existence as an operative fact negating the acceptance of "a principle of absolute retroactive invalidity." Whatever was done while the legislative or the **executive act** was in operation should be duly recognized and presumed to be valid in all respects. **The ASSO that was issued in 1979 under General Order No. 60 — long before our Decision in *Tañada* and the arrest of petitioner — is an operative fact that can no longer be disturbed or simply ignored.** (Citations omitted; Emphasis supplied.)

To reiterate, although the assailed Resolution No. 2005-32-01 states that it revokes or recalls the SDP, what it actually revoked or recalled was the PARC's approval of the SDP embodied in Resolution No. 89-12-2. Consequently, what was actually declared null and void was an executive act, PARC Resolution No. 89-12-2,[167] and not a contract (SDOA). It is, therefore, wrong to say that it was the SDOA which was annulled in the instant case. Evidently, the operative fact doctrine is applicable.

IV.

While the assailed PARC resolutions effectively nullifying the Hacienda Luisita SDP are upheld, the revocation must, by application of the operative fact principle, give way to the right of the original 6,296 qualified FWBs to choose whether they want to remain as HLI stockholders or not. The Court cannot turn a blind eye to the fact that in 1989, 93% of the FWBs agreed to the SDOA (or the MOA), which became the basis of the SDP approved by PARC per its Resolution No. 89-12-2 dated November 21, 1989. From 1989 to 2005, the FWBs were said to have received from HLI salaries and cash benefits, hospital and medical benefits, 240-square meter homelots, 3% of the gross produce from agricultural lands, and 3% of the proceeds of the sale of the 500-hectare converted land and the 80.51-hectare lot sold to SCTEX. HLI shares totaling 118,391,976.85 were distributed as of April 22, 2005.[168] On August 6, 20l0, HLI and private respondents submitted a Compromise Agreement, in which HLI gave the FWBs the

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[167] See *Province of North Cotabato v. GRP Peace Panel on Ancestral Domain*, G.R. Nos. 183591, 183752, 183893, 183951 and 183962, October 14, 2008.

[168] *Rollo*, p. 193.

option of acquiring a piece of agricultural land or remain as HLI stockholders, and as a matter of fact, most FWBs indicated their choice of remaining as stockholders. These facts and circumstances tend to indicate that some, if not all, of the FWBs may actually desire to continue as HLI shareholders. A matter best left to their own discretion.

With respect to the other FWBs who were not listed as qualified beneficiaries as of November 21, 1989 when the SDP was approved, they are not accorded the right to acquire land but shall, however, continue as HLI stockholders. All the benefits and homelots[169] received by the 10,502 FWBs (6,296 original FWBs and 4,206 non-qualified FWBs) listed as HLI stockholders as of August 2, 2010 shall be respected with no obligation to refund or return them since the benefits (except the homelots) were received by the FWBs as farmhands in the agricultural enterprise of HLI and other fringe benefits were granted to them pursuant to the existing collective bargaining agreement with Tadeco. If the number of HLI shares in the names of the original FWBs who opt to remain as HLI stockholders falls below the guaranteed allocation of 18,804.32 HLI shares per FWB, the HLI shall assign additional shares to said FWBs to complete said minimum number of shares at no cost to said FWBs.

With regard to the homelots already awarded or earmarked, the FWBs are not obliged to return the same to HLI or pay for its value since this is a benefit granted under the SDP. The homelots do not form part of the 4,915.75 hectares covered by the SDP but were taken from the 120.9234 hectare residential lot owned by Tadeco. Those who did not receive the homelots as of the revocation of the SDP on December 22, 2005 when PARC Resolution No. 2005-32-01 was issued, will no longer be entitled to homelots. Thus, in the determination of the ultimate agricultural land that will be subjected to land distribution, the aggregate area of the homelots will no longer be deducted.

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[169] *Rollo*, p. 3738. These homelots do not form part of the 4,915.75 hectares of agricultural land in Hacienda Luisita. These are part of the residential land with a total area of 120.9234 hectares, as indicated in the SDP.

There is a claim that, since the sale and transfer of the 500 hectares of land subject of the August 14, 1996 Conversion Order and the 80.51-hectare SCTEX lot came after compulsory coverage has taken place, the FWBs should have their corresponding share of the land's value. There is merit in the claim. Since the SDP approved by PARC Resolution No. 89-12-2 has been nullified, then all the lands subject of the SDP will automatically be subject of compulsory coverage under Sec. 31 of RA 6657. Since the Court excluded the 500-hectare lot subject of the August 14, 1996 Conversion Order and the 80.51-hectare SCTEX lot acquired by the government from the area covered by SDP, then HLI and its subsidiary, Centennary, shall be liable to the FWBs for the price received for said lots. HLI shall be liable for the value received for the sale of the 200-hectare land to LRC in the amount of PhP 500,000,000 and the equivalent value of the 12,000,000 shares of its subsidiary, Centennary, for the 300-hectare lot sold to LIPCO for the consideration of PhP 750,000,000. Likewise, HLI shall be liable for PhP 80,511,500 as consideration for the sale of the 80.51-hectare SCTEX lot.

We, however, note that HLI has allegedly paid 3% of the proceeds of the sale of the 500-hectare land and 80.51-hectare SCTEX lot to the FWBs. We also take into account the payment of taxes and expenses relating to the transfer of the land and HLI's statement that most, if not all, of the proceeds were used for legitimate corporate purposes. In order to determine once and for all whether or not all the proceeds were properly utilized by HLI and its subsidiary, Centennary, DAR will engage the services of a reputable accounting firm to be approved by the parties to audit the books of HLI to determine if the proceeds of the sale of the 500-hectare land and the 80.51-hectare SCTEX lot were actually used for legitimate corporate purposes, titling expenses and in compliance with the August 14, 1996 Conversion Order. The cost of the audit will be shouldered by HLI. If after such audit, it is determined that there remains a balance from the proceeds of the sale, then the balance shall be distributed to the qualified FWBs.

A view has been advanced that HLI must pay the FWBs yearly rent for use of the land from 1989. We disagree. It should not be forgotten that the FWBs are also stockholders of HLI, and the benefits acquired by the corporation from its possession and use of the land ultimately redounded to the FWBs' benefit based on its business operations in the form of salaries, and other fringe benefits under the CBA. To still require HLI to pay rent to the FWBs will result in double compensation.

For sure, HLI will still exist as a corporation even after the revocation of the SDP although it will no longer be operating under the SDP, but pursuant to the Corporation Code as a private stock corporation. The non-agricultural assets amounting to PhP 393,924,220 shall remain with HLI, while the agricultural lands valued at PhP 196,630,000 with an original area of 4,915.75 hectares shall be turned over to DAR for distribution to the FWBs. To be deducted from said area are the 500-hectare lot subject of the August 14, 1996 Conversion Order, the 80.51-hectare SCTEX lot, and the total area of 6,886.5 square meters of individual lots that should have been distributed to FWBs by DAR had they not opted to stay in HLI.

HLI shall be paid just compensation for the remaining agricultural land that will be transferred to DAR for land distribution to the FWBs. We find that the date of the "taking" is November 21, 1989, when PARC approved HLI's SDP per PARC Resolution No. 89-12-2. DAR shall coordinate with LBP for the determination of just compensation. We cannot use May 11, 1989 when the SDOA was executed, since it was the SDP, not the SDOA, that was approved by PARC.

The instant petition is treated *pro hac vice* in view of the peculiar facts and circumstances of the case.

WHEREFORE, the instant petition is **DENIED**. PARC Resolution No. 2005-32-01 dated December 22, 2005 and Resolution No. 2006-34-01 dated May 3, 2006 are hereby **AFFIRMED** with the **MODIFICATION**

that the original 6,296 qualified FWBs shall have the option to remain as stockholders of HLI. DAR shall immediately schedule meetings with the said 6,296 FWBs and explain to them the effects, consequences and legal or practical implications of their choice, after which the FWBs will be asked to manifest, in secret voting, their choices in the ballot, signing their signatures or placing their thumbmarks, as the case may be, over their printed names.

Of the 6,296 FWBs, he or she who wishes to continue as an HLI stockholder is entitled to 18,804.32 HLI shares, and, in case the HLI shares already given to him or her is less than 18,804.32 shares, the HLI is ordered to issue or distribute additional shares to complete said prescribed number of shares at no cost to the FWB within thirty (30) days from finality of this Decision. Other FWBs who do not belong to the original 6,296 qualified beneficiaries are not entitled to land distribution and shall remain as HLI shareholders. All salaries, benefits, 3% production share and 3% share in the proceeds of the sale of the 500-hectare converted land and the 80.51-hectare SCTEX lot and homelots already received by the 10,502 FWBs, composed of 6,296 original FWBs and 4,206 non-qualified FWBs, shall be respected with no obligation to refund or return them.

Within thirty (30) days after determining who from among the original FWBs will stay as stockholders, DAR shall segregate from the HLI agricultural land with an area of 4,915.75 hectares subject of PARC's SDP-approving Resolution No. 89-12-2 the following: (a) the 500-hectare lot subject of the August 14, l996 Conversion Order; (b) the 80.51-hectare lot sold to, or acquired by, the government as part of the SCTEX complex; and (c) the aggregate area of 6,886.5 square meters of individual lots that each FWB is entitled to under the CARP had he or she not opted to stay in HLI as a stockholder. After the segregation process, as indicated, is done, the remaining area shall be turned over to DAR for immediate land distribution to the original qualified FWBs who opted not to remain as HLI stockholders.

The aforementioned area composed of 6,886.5-square meter lots allotted to the FWBs who stayed with the corporation shall form part of the HLI assets.

HLI is directed to pay the 6,296 FWBs the consideration of PhP 500,000,000 received by it from Luisita Realty, Inc. for the sale to the latter of 200 hectares out of the 500 hectares covered by the August 14, 1996 Conversion Order, the consideration of PhP 750,000,000 received by its owned subsidiary, Centennary Holdings, Inc. for the sale of the remaining 300 hectares of the aforementioned 500-hectare lot to Luisita Industrial Park Corporation, and the price of PhP 80,511,500 paid by the government through the Bases Conversion Development Authority for the sale of the 80.51-hectare lot used for the construction of the SCTEX road network. From the total amount of PhP 1,330,000,000 (PhP 500,000,000 + PhP 750,000,000 + PhP 80,511,500 = PhP 1,330,511,500) shall be deducted the 3% of the total gross sales from the production of the agricultural land and the 3% of the proceeds of said transfers that were paid to the FWBs, the taxes and expenses relating to the transfer of titles to the transferees, and the expenditures incurred by HLI and Centennary Holdings, Inc. for legitimate corporate purposes. For this purpose, DAR is ordered to engage the services of a reputable accounting firm approved by the parties to audit the books of HLI and Centennary Holdings, Inc. to determine if the PhP 1,330,000,000 proceeds of the sale of the three (3) aforementioned lots were used or spent for legitimate corporate purposes. Any unspent or unused balance as determined by the audit shall be distributed to the 6,296 original FWBs.

HLI is entitled to just compensation for the agricultural land that will be transferred to DAR to be reckoned from November 21, 1989 per PARC Resolution No. 89-12-2. DAR and LBP are ordered to determine the compensation due to HLI.

DAR shall submit a compliance report after six (6) months from finality of this judgment. It shall also submit, after submission of the

compliance report, quarterly reports on the execution of this judgment to be submitted within the first 15 days at the end of each quarter, until fully implemented.

The temporary restraining order is lifted.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:

RENATO C. CORONA
Chief Justice

ANTONIO T. CARPIO
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARIA LOURDES P. A. SERENO
Associate Justice

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

Pursuant to Section 13, Article VIII of the Constitution, 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.

RENATO C. CORONA
Chief Justice