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, PERALTA, BERSAMIN, DEL CASTILLO, ABAD, VILLARAMA, JR., PEREZ, MENDOZA, and SERENO, REYES, PERLAS-BERNABE, *JJ*.
- versus - **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.	Promulgated: November 22, 2011

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R E S O L U T I O N

VELASCO, JR., *J.*:

For resolution are the (1) *Motion for Clarification and Partial Reconsideration* dated July 21, 2011 filed by petitioner Hacienda Luisita, Inc. (HLI); (2) *Motion for Partial Reconsideration* dated July 20, 2011 filed by public respondents Presidential Agrarian Reform Council (PARC) and Department of Agrarian Reform (DAR); (3) *Motion for Reconsideration* dated July 19, 2011 filed by private respondent Alyansa ng mga Manggagawang Bukid sa Hacienda Luisita (AMBALA); (4)*Motion for Reconsideration* dated July 21, 2011 filed by respondent-intervenor Farmworkers Agrarian Reform Movement, Inc. (FARM); (5) *Motion for Reconsideration* dated July 21, 2011 filed by private respondents Noel Mallari, Julio Suniga, Supervisory Group of Hacienda Luisita, Inc. (Supervisory Group) and Windsor Andaya (collectively referred to as "Mallari, et al."); and (6) *Motion for Reconsideration* dated July 22, 2011 filed by private respondents Rene Galang and AMBALA.[2]

On July 5, 2011, this Court promulgated a Decision[3] in the above-captioned case, denying the petition filed by HLI and affirming Presidential Agrarian Reform Council (PARC) Resolution No. 2005-32-01 dated December 22, 2005 and PARC Resolution No. 2006-34-01 dated May 3, 2006 with the modification that the original 6,296 qualified farmworker-beneficiaries of Hacienda Luisita (FWBs) shall have the option to remain as stockholders of HLI.

In its *Motion for Clarification and Partial Reconsideration* dated July 21, 2011, HLI raises the following issues for Our consideration:

A

IT IS NOT PROPER, EITHER IN LAW OR IN EQUITY, TO DISTRIBUTE TO THE ORIGINAL FWBs OF 6,296 THE UNSPENT OR UNUSED BALANCE OF THE PROCEEDS OF THE SALE OF THE 500 HECTARES AND 80.51 HECTARES OF THE HLI LAND, BECAUSE:

(1) THE PROCEEDS OF THE SALE BELONG TO THE CORPORATION, HLI, AS CORPORATE CAPITAL AND ASSETS IN SUBSTITUTION FOR THE PORTIONS OF ITS LAND ASSET WHICH WERE SOLD TO THIRD PARTY;

(2) TO DISTRIBUTE THE CASH SALES PROCEEDS OF THE PORTIONS OF THE LAND ASSET TO THE FWBs, WHO ARE STOCKHOLDERS OF HLI, IS TO DISSOLVE THE CORPORATION AND DISTRIBUTE THE PROCEEDS AS LIQUIDATING DIVIDENDS WITHOUT EVEN PAYING THE CREDITORS OF THE CORPORATION;

(3) THE DOING OF SAID ACTS WOULD VIOLATE THE STRINGENT PROVISIONS OF THE CORPORATION CODE AND CORPORATE PRACTICE.

B

IT IS NOT PROPER, EITHER IN LAW OR IN EQUITY, TO RECKON THE PAYMENT OF JUST COMPENSATION FROM NOVEMBER 21, 1989 WHEN THE PARC, THEN UNDER THE CHAIRMANSHIP OF DAR SECRETARY MIRIAM DEFENSOR-SANTIAGO, APPROVED THE STOCK DISTRIBUTION PLAN (SDP) PROPOSED BY TADECO/HLI, BECAUSE:

(1) THAT PARC RESOLUTION NO. 89-12-2 DATED NOVEMBER 21, 1989 WAS NOT THE "ACTUAL TAKING" OF THE TADECO's/HLI's AGRICULTURAL LAND;

(2) THE RECALL OR REVOCATION UNDER RESOLUTION NO. 2005-32-01 OF THAT SDP BY THE NEW PARC UNDER THE CHAIRMANSHIP OF DAR SECRETARY NASSER PANGANDAMAN ON DECEMBER 22, 2005 OR 16 YEARS EARLIER WHEN THE SDP WAS APPROVED DID NOT RESULT IN "ACTUAL TAKING" ON NOVEMBER 21, 1989;

(3) TO PAY THE JUST COMPENSATION AS OF NOVEMBER 21, 1989 OR 22 YEARS BACK WOULD BE ARBITRARY, UNJUST, AND OPPRESSIVE, CONSIDERING THE IMPROVEMENTS, EXPENSES IN THE MAINTENANCE AND PRESERVATION OF THE LAND, AND RISE IN LAND PRICES OR VALUE OF THE PROPERTY.

On the other hand, PARC and DAR, through the Office of the Solicitor General (OSG), raise the following issues in their *Motion for Partial Reconsideration* dated July 20, 2011:

THE DOCTRINE OF OPERATIVE FACT DOES NOT APPLY TO THIS CASE FOR THE FOLLOWING REASONS:

I

THERE IS NO LAW OR RULE WHICH HAS BEEN INVALIDATED ON THE GROUND OF UNCONSTITUTIONALITY; AND

II

THIS DOCTRINE IS A RULE OF EQUITY WHICH MAY BE APPLIED ONLY IN THE ABSENCE OF A LAW. IN THIS CASE, THERE IS A POSITIVE LAW WHICH MANDATES THE DISTRIBUTION OF THE LAND AS A RESULT OF THE REVOCATION OF THE STOCK DISTRIBUTION PLAN (SDP).

For its part, AMBALA poses the following issues in its *Motion for Reconsideration* dated July 19, 2011:

I

THE MAJORITY OF THE MEMBERS OF THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT SECTION 31 OF REPUBLIC ACT 6657 (RA 6657) IS CONSTITUTIONAL.

II

THE MAJORITY OF THE MEMBERS OF THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT ONLY THE [PARC'S] APPROVAL OF HLI's PROPOSAL FOR STOCK DISTRIBUTION UNDER CARP AND THE [SDP] WERE REVOKED AND NOT THE STOCK DISTRIBUTION OPTION AGREEMENT (SDOA).

III

THE MAJORITY OF THE MEMBERS OF THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN APPLYING THE DOCTRINE OF OPERATIVE FACTS AND IN MAKING THE [FWBs] CHOOSE TO OPT FOR ACTUAL LAND DISTRIBUTION OR TO REMAIN AS STOCKHOLDERS OF [HLI].

IV

THE MAJORITY OF THE MEMBERS OF THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT IMPROVING THE ECONOMIC STATUS OF FWBs IS NOT AMONG THE LEGAL OBLIGATIONS OF HLI UNDER THE SDP AND AN IMPERATIVE IMPOSITION BY [RA 6657] AND DEPARTMENT OF AGRARIAN REFORM ADMINISTRATIVE ORDER NO. 10 (DAO 10).

V

THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT THE CONVERSION OF THE AGRICULTURAL LANDS DID NOT VIOLATE THE CONDITIONS OF RA 6657 AND DAO 10.

VI

THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT PETITIONER IS ENTITLED TO PAYMENT OF JUST COMPENSATION. SHOULD THE HONORABLE COURT AFFIRM THE ENTITLEMENT OF THE PETITIONER TO JUST COMPENSATION, THE SAME SHOULD BE PEGGED TO FORTY THOUSAND PESOS (PhP 40,000.00) PER HECTARE.

VII

THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT LUISITA INDUSTRIAL PARK CORP. (LIPCO) AND RIZAL COMMERCIAL BANKING CORPORATION (RCBC) ARE INNOCENT PURCHASERS FOR VALUE.

In its *Motion for Reconsideration* dated July 21, 2011, FARM similarly puts forth the following issues:

I

THE HONORABLE SUPREME COURT SHOULD HAVE STRUCK DOWN SECTION 31 OF [RA 6657] FOR BEING UNCONSTITUTIONAL. THE CONSTITUTIONALITY ISSUE THAT WAS RAISED BY THE RESPONDENTS-INTERVENORS IS THE *LIS MOTA* OF THE CASE.

II

THE HONORABLE SUPREME COURT SHOULD NOT HAVE APPLIED THE DOCTRINE OF "OPERATIVE FACT" TO THE CASE.

THE OPTION GIVEN TO THE FARMERS TO REMAIN AS STOCKHOLDERS OF HACIENDA LUISITA IS EQUIVALENT TO AN OPTION FOR HACIENDA LUISITA TO RETAIN LAND IN DIRECT VIOLATION OF THE COMPREHENSIVE AGRARIAN REFORM LAW. THE DECEPTIVE STOCK DISTRIBUTION OPTION / STOCK DISTRIBUTION PLAN CANNOT JUSTIFY SUCH RESULT, ESPECIALLY AFTER THE SUPREME COURT HAS AFFIRMED ITS REVOCATION.

III

THE HONORABLE SUPREME COURT SHOULD NOT HAVE CONSIDERED [LIPCO] AND [RCBC] AS INNOCENT PURCHASERS FOR VALUE IN THE INSTANT CASE.

Mallari, et al., on the other hand, advance the following grounds in support of their *Motion for Reconsideration* dated July 21, 2011:

(1) THE HOMELOTS REQUIRED TO BE DISTRIBUTED HAVE ALL BEEN DISTRIBUTED PURSUANT TO THE MEMORANDUM OF AGREEMENT. WHAT REMAINS MERELY IS THE RELEASE OF TITLE FROM THE REGISTER OF DEEDS.

(2) THERE HAS BEEN NO DILUTION OF SHARES. CORPORATE RECORDS WOULD SHOW THAT IF EVER NOT ALL OF THE 18,804.32 SHARES WERE GIVEN TO THE ACTUAL ORIGINAL FARMWORKER BENEFICIARY, THE RECIPIENT OF THE DIFFERENCE IS THE NEXT OF KIN OR CHILDREN OF SAID ORIGINAL [FWBs]. HENCE, WE RESPECTFULLY SUBMIT THAT SINCE THE SHARES WERE GIVEN TO THE SAME "FAMILY BENEFICIARY", THIS SHOULD BE DEEMED AS SUBSTANTIAL COMPLIANCE WITH THE PROVISIONS OF SECTION 4 OF DAO 10.

(3) THERE HAS BEEN NO VIOLATION OF THE 3-MONTH PERIOD TO IMPLEMENT THE [SDP] AS PROVIDED FOR BY SECTION 11 OF DAO 10 AS THIS PROVISION MUST BE READ IN LIGHT OF SECTION 10 OF EXECUTIVE ORDER NO. 229, THE PERTINENT PORTION OF WHICH READS, "THE APPROVAL BY THE PARC OF A PLAN FOR SUCH STOCK DISTRIBUTION, AND ITS INITIAL IMPLEMENTATION, SHALL BE DEEMED COMPLIANCE WITH THE LAND DISTRIBUTION REQUIREMENT OF THE CARP."

(4) THE VALUATION OF THE LAND CANNOT BE BASED AS OF NOVEMBER 21, 1989, THE DATE OF APPROVAL OF THE STOCK DISTRIBUTION OPTION. INSTEAD, WE RESPECTFULLY SUBMIT

THAT THE "TIME OF TAKING" FOR VALUATION PURPOSES IS A FACTUAL ISSUE BEST LEFT FOR THE TRIAL COURTS TO DECIDE.

(5) TO THOSE WHO WILL CHOOSE LAND, THEY MUST RETURN WHAT WAS GIVEN TO THEM UNDER THE SDP. IT WOULD BE UNFAIR IF THEY ARE ALLOWED TO GET THE LAND AND AT THE SAME TIME HOLD ON TO THE BENEFITS THEY RECEIVED PURSUANT TO THE SDP IN THE SAME WAY AS THOSE WHO WILL CHOOSE TO STAY WITH THE SDO.

Lastly, Rene Galang and AMBALA, through the Public Interest Law Center (PILC), submit the following grounds in support of their *Motion for Reconsideration*dated July 22, 2011:

I

THE HONORABLE COURT, WITH DUE RESPECT, GRAVELY ERRED IN ORDERING THE HOLDING OF A VOTING OPTION INSTEAD OF TOTALLY REDISTRIBUTING THE SUBJECT LANDS TO [FWBs] in [HLI].

A. THE HOLDING OF A VOTING OPTION HAS NO LEGAL BASIS. THE REVOCATION OF THE [SDP] CARRIES WITH IT THE REVOCATION OF THE [SDOA].

B. GIVING THE [FWBs] THE OPTION TO REMAIN AS STOCKHOLDERS OF HLI WITHOUT MAKING THE NECESSARY CHANGES IN THE CORPORATE STRUCTURE WOULD ONLY SUBJECT THEM TO FURTHER MANIPULATION AND HARDSHIP.

C. OTHER VIOLATIONS COMMITTED BY HLI UNDER THE [SDOA] AND PERTINENT LAWS JUSTIFY TOTAL LAND REDISTRIBUTION OF HACIENDA LUISITA.

II

THE HONORABLE COURT, WITH DUE RESPECT, GRAVELY ERRED IN HOLDING THAT THE [RCBC] AND [LIPCO] ARE INNOCENT PURCHASERS FOR VALUE OF THE 300-HECTARE PROPERTY IN HACIENDA LUISITA THAT WAS SOLD TO THEM PRIOR TO THE INCEPTION OF THE PRESENT CONTROVERSY.

Ultimately, the issues for Our consideration are the following: (1) applicability of the operative fact doctrine; (2) constitutionality of Sec. 31 of RA 6657 or the*Comprehensive Agrarian Reform Law of 1988*; (3) coverage of compulsory acquisition; (4) just compensation; (5) sale to third parties; (6) the violations of HLI; and (7) control over agricultural lands.

We shall discuss these issues accordingly.

I. Applicability of the Operative Fact Doctrine

In their motion for partial reconsideration, DAR and PARC argue that the doctrine of operative fact does not apply to the instant case since: (1) there is no law or rule which has been invalidated on the ground of unconstitutionality;[4] (2) the doctrine of operative fact is a rule of equity which may be applied only in the absence of a law, and in this case, they maintain that there is a positive law which mandates the distribution of the land as a result of the revocation of the stock distribution plan (SDP).[5]

Echoing the stance of DAR and PARC, AMBALA submits that the operative fact doctrine should only be made to apply in the extreme case in which equity demands it, which allegedly is not in the instant case.[6] It further argues that there would be no undue harshness or injury to HLI in case lands are actually distributed to the farmworkers, and that the decision which orders the farmworkers to choose whether to remain as stockholders of HLI or to opt for land distribution would result in inequity and prejudice to the farmworkers.[7] The foregoing views are also similarly shared by Rene Galang and AMBALA, through the PILC.[8] In addition, FARM posits that the option given to the FWBs is equivalent to an option for HLI to retain land in direct violation of RA 6657.[9]

(a) Operative Fact Doctrine Not Limited to

Invalid or Unconstitutional Laws

Contrary to the stance of respondents, the operative fact doctrine does not only apply to laws subsequently declared unconstitutional or unlawful, as it also applies to executive acts subsequently declared as invalid. As We have discussed in Our July 5, 2011 Decision:

> 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*, 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:
> >
> > 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.

The applicability of the operative fact doctrine to executive acts was further explicated by this Court in *Rieta v. People*, 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. 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 in the original.)

Bearing in mind that PARC Resolution No. 89-12-2[10]—an executive act—was declared invalid in the instant case, the operative fact doctrine is clearly applicable.

Nonetheless, the minority is of the persistent view that the applicability of the operative fact doctrine should be limited to statutes and rules and regulations issued by the executive department that are accorded the same status as that of a statute or those which are quasi-legislative in nature. Thus, the minority concludes that the phrase "executive act" used in the case of *De Agbayani v. Philippine National Bank*[11] refers only to acts, orders, and rules and regulations that have the force and effect of law. The minority also made mention of the Concurring Opinion of Justice Enrique Fernando in *Municipality of Malabang v. Benito*,[12] where it was supposedly made explicit that the operative fact doctrine applies to executive acts, which are ultimately quasi-legislative in nature.

We disagree. For one, neither the *De Agbayani* case nor the *Municipality of Malabang* case elaborates what "executive act" mean. Moreover, while orders, rules and regulations issued by the President or the executive branch have fixed definitions and meaning in the Administrative Code and jurisprudence, the phrase "executive act" does not have such specific definition under existing laws. It should be noted that in the cases cited by the minority, nowhere can it be found that the term "executive act" is confined to the foregoing. Contrarily, the term "executive act" is broad enough to encompass decisions of administrative bodies and agencies under the executive department which are subsequently revoked by the agency in question or nullified by the Court.

A case in point is the concurrent appointment of Magdangal B. Elma (Elma) as Chairman of the Presidential Commission on Good Government (PCGG) and as Chief Presidential Legal Counsel (CPLC) which was

declared unconstitutional by this Court in *Public Interest Center, Inc. v. Elma*.[13] In said case, this Court ruled that the concurrent appointment of Elma to these offices is in violation of Section 7, par. 2, Article IX-B of the 1987 Constitution, since these are incompatible offices. Notably, the appointment of Elma as Chairman of the PCGG and as CPLC is, without a question, an executive act. Prior to the declaration of unconstitutionality of the said executive act, certain acts or transactions were made in good faith and in reliance of the appointment of Elma which cannot just be set aside or invalidated by its subsequent invalidation.

In *Tan v. Barrios*,[14] this Court, in applying the operative fact doctrine, held that despite the invalidity of the jurisdiction of the military courts over civilians, certain operative facts must be acknowledged to have existed so as not to trample upon the rights of the accused therein. Relevant thereto, in *Olaguer v. Military Commission No. 34*,[15] it was ruled that "military tribunals pertain to the Executive Department of the Government and are simply instrumentalities of the executive power, provided by the legislature for the President as Commander-in-Chief to aid him in properly commanding the army and navy and enforcing discipline therein, and utilized under his orders or those of his authorized military representatives."[16]

Evidently, the operative fact doctrine is not confined to statutes and rules and regulations issued by the executive department that are accorded the same status as that of a statute or those which are quasi-legislative in nature.

Even assuming that *De Agbayani* initially applied the operative fact doctrine only to executive issuances like orders and rules and regulations, said principle can nonetheless be applied, by analogy, to decisions made by the President or the agencies under the executive department. This doctrine,

in the interest of justice and equity, can be applied liberally and in a broad sense to encompass said decisions of the executive branch. In keeping with the demands of equity, the Court can apply the operative fact doctrine to acts and consequences that resulted from the reliance not only on a law or executive act which is quasi-legislative in nature but also on decisions or orders of the executive branch which were later nullified. This Court is not unmindful that such acts and consequences must be recognized in the higher interest of justice, equity and fairness.

Significantly, a decision made by the President or the administrative agencies has to be complied with because it has the force and effect of law, springing from the powers of the President under the Constitution and existing laws. Prior to the nullification or recall of said decision, it may have produced acts and consequences in conformity to and in reliance of said decision, which must be respected. It is on this score that the operative fact doctrine should be applied to acts and consequences that resulted from the implementation of the PARC Resolution approving the SDP of HLI.

More importantly, respondents, and even the minority, failed to clearly explain how the option to remain in HLI granted to individual farmers would result in inequity and prejudice. We can only surmise that respondents misinterpreted the option as a referendum where all the FWBs will be bound by a majority vote favoring the retention of all the 6,296 FWBs as HLI stockholders. Respondents are definitely mistaken. The *fallo* of Our July 5, 2011 Decision is unequivocal that only those FWBs who signified their desire to remain as HLI stockholders are entitled to 18,804.32 shares each, while those who opted not to remain as HLI stockholders will be given land by DAR. Thus, referendum was not required but only individual options were granted to each FWB whether or not they will remain in HLI.

The application of the operative fact doctrine to the FWBs is not iniquitous and prejudicial to their interests but is actually beneficial and fair to them. *First*, they are granted the right to remain in HLI as stockholders and they acquired said shares without paying their value to the corporation. On the other hand, the qualified FWBs are required to pay the value of the land to the Land Bank of the Philippines (LBP) if land is awarded to them by DAR pursuant to RA 6657. If the qualified FWBs really want agricultural land, then they can simply say no to the option. And *second*, if the operative fact doctrine is not applied to them, then the FWBs will be required to return to HLI the 3% production share, the 3% share in the proceeds of the sale of the 500-hectare converted land, and the 80.51-hectare Subic-Clark-Tarlac Expressway (SCTEX) lot, the homelots and other benefits received by the FWBs from HLI. With the application of the operative fact doctrine, said benefits, homelots and the 3% production share and 3% share from the sale of the 500-hectare and SCTEX lots shall be respected with no obligation to refund or return them. The receipt of these things is an operative fact "that can no longer be disturbed or simply ignored."

(b) The Operative Fact Doctrine as Recourse in Equity

As mentioned above, respondents contend that the operative fact doctrine is a rule of equity which may be applied only in the absence of a law, and that in the instant case, there is a positive law which mandates the distribution of the land as a result of the revocation of the SDP.

Undeniably, the operative fact doctrine is a rule of equity.[17] As a complement of legal jurisdiction, equity "seeks to reach and complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent to do so. Equity regards the spirit and not the letter, the intent

and not the form, the substance rather than the circumstance, as it is variously expressed by different courts."[18] Remarkably, it is applied only in the absence of statutory law and never in contravention of said law.[19]

In the instant case, respondents argue that the operative fact doctrine should not be applied since there is a positive law, particularly, Sec. 31 of RA 6657, which directs the distribution of the land as a result of the revocation of the SDP. Pertinently, the last paragraph of Sec. 31 of RA 6657 states:

> If within two (2) years from the approval of this Act, the 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 supplied.)

Markedly, the use of the word **"or"** under the last paragraph of Sec. 31 of RA 6657 connotes that the law gives the corporate landowner an "option" to avail of the stock distribution option or to have the SDP approved within two (2) years from the approval of RA 6657. This interpretation is consistent with the well-established principle in statutory construction that "[t]he word or is a disjunctive term signifying disassociation and independence of one thing from the other things enumerated; it should, as a rule, be construed in the sense in which it ordinarily implies, as a disjunctive word."[20] In *PCI Leasing and Finance, Inc. v. Giraffe-X Creative Imaging, Inc.*,[21] this Court held:

> Evidently, the letter did not make a demand for the payment of the P8,248,657.47 **AND** the return of the equipment; only either one of the two was required. The demand letter was prepared and signed by Atty. Florecita R. Gonzales, presumably petitioner's counsel. As such, the use of **"or"** instead of **"and"** in the letter could hardly be treated as a simple typographical error, bearing in mind the nature of the demand, the amount involved, and the fact that it was made by a lawyer. Certainly Atty.

Gonzales would have known that a world of difference exists between "and" and "or" in the manner that the word was employed in the letter.

> A rule in statutory construction is that the word "or" is a disjunctive term signifying dissociation and independence of one thing from other things enumerated unless the context requires a different interpretation.[22]
>
> **In its elementary sense, "or", as used in a statute, is a disjunctive article indicating an alternative. It often connects a series of words or propositions indicating a choice of either. When "or" is used, the various members of the enumeration are to be taken separately.**[23]
>
> The word "or" is a disjunctive term signifying disassociation and independence of one thing from each of the other things enumerated.[24] (Emphasis in the original.)

Given that HLI secured approval of its SDP in November 1989, well within the two-year period reckoned from June 1988 when RA 6657 took effect, then HLI did not violate the last paragraph of Sec. 31 of RA 6657. Pertinently, said provision does not bar Us from applying the operative fact doctrine.

Besides, it should be recognized that this Court, in its July 5, 2011 Decision, affirmed the revocation of Resolution No. 89-12-2 and ruled for the compulsory coverage of the agricultural lands of Hacienda Luisita in view of HLI's violation of the SDP and DAO 10. By applying the operative fact doctrine, this Court merely gave the qualified FWBs the option to remain as stockholders of HLI and ruled that they will retain the homelots and other benefits which they received from HLI by virtue of the SDP.

It bears stressing that the application of the operative fact doctrine by the Court in its July 5, 2011 Decision is favorable to the FWBs because not only were the FWBs allowed to retain the benefits and homelots they received under the stock distribution scheme, they were also given the

option to choose for themselves whether they want to remain as stockholders of HLI or not. This is in recognition of the fact that despite the claims of certain farmer groups that they represent the qualified FWBs in Hacienda Luisita, none of them can show that they are duly authorized to speak on their behalf. As We have mentioned, "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."

II. Constitutionality of Sec. 31, RA 6657

FARM insists that the issue of constitutionality of Sec. 31 of RA 6657 is the *lis mota* of the case, raised at the earliest opportunity, and not to be considered as moot and academic.[25]

This contention is unmeritorious. As We have succinctly discussed in Our July 5, 2011 Decision:

> 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 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. 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 plausible, an issue assailing the constitutionality of a statute or governmental act. If some other grounds exist by which judgment can be made without touching the constitutionality of a law, such recourse is favored. *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.

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, 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 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. (Citations omitted; emphasis in the original.)

Based on the foregoing disquisitions, We maintain that this Court is NOT compelled to rule on the constitutionality of Sec. 31 of RA 6657. In this regard, We clarify that this Court, in its July 5, 2011 Decision, made no ruling in favor of the constitutionality of Sec. 31 of RA 6657. There was, however, a determination of the existence of an apparent grave violation of the Constitution that may justify the resolution of the issue of constitutionality, to which this Court ruled in the negative. Having clarified this matter, all other points raised by both FARM and AMBALA concerning the constitutionality of RA 6657 deserve scant consideration.

III. Coverage of Compulsory Acquisition

FARM argues that this Court ignored certain material facts when it limited the maximum area to be covered to 4,915.75 hectares, whereas the area that should, at the least, be covered is 6,443 hectares,[26] which is the agricultural land allegedly covered by RA 6657 and previously held by Tarlac Development Corporation (Tadeco).[27]

We cannot subscribe to this view. Since what is put in issue before the Court is the propriety of the revocation of the SDP, which only involves 4,915.75 has. of agricultural land and not 6,443 has., then We are constrained to rule only as regards the 4,915.75 has. of agricultural land.

Moreover, as admitted by FARM itself, this issue was raised for the first time by FARM in its Memorandum dated September 24, 2010 filed before this Court.[28] In this regard, it should be noted that "[a]s a legal recourse, the special civil action of certiorari is a limited form of review."[29] The certiorari jurisdiction of this Court is narrow in scope as it is restricted to resolving errors of jurisdiction and grave abuse of discretion, and not errors of judgment.[30] To allow additional issues at this stage of the proceedings is violative of fair play, justice and due process.[31]

Nonetheless, it should be taken into account that this should not prevent the DAR, under its mandate under the agrarian reform law, from subsequently subjecting to agrarian reform other agricultural lands originally held by Tadeco that were allegedly not transferred to HLI but were supposedly covered by RA 6657.

DAR, however, contends that the declaration of the area[32] to be awarded to each FWB is too restrictive. It stresses that in agricultural landholdings like Hacienda Luisita, there are roads, irrigation canals, and other portions of the land that are considered commonly-owned by farmworkers, and this may necessarily result in the decrease of the area size that may be awarded per FWB.[33] DAR also argues that the July 5, 2011 Decision of this Court does not give it any leeway in adjusting the area that may be awarded per FWB in case the number of actual qualified FWBs decreases.[34]

The argument is meritorious. In order to ensure the proper distribution of the agricultural lands of Hacienda Luisita per qualified FWB, and considering that matters involving strictly the administrative implementation and enforcement of agrarian reform laws are within the jurisdiction of the DAR,[35] it is the latter which shall determine the area with which each qualified FWB will be awarded.

(a) Conversion of Agricultural Lands

AMBALA insists that the conversion of the agricultural lands violated the conditions of RA 6657 and DAO 10, stating that "keeping the land intact and unfragmented is one of the essential conditions of [the] SD[P], RA 6657 and DAO 10."[36] It asserts that "this provision or conditionality is not mere decoration and is intended to ensure that the farmers can continue with the tillage of the soil especially since it is the only occupation that majority of them knows."[37]

We disagree. As We amply discussed in Our July 5, 2011 Decision:

> 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.
>
> 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."[38]
>
> 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:
>
> > 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

Moreover, it is worth noting that the application for conversion had the backing of 5,000 or so FWBs, including respondents Rene Galang, and Jose Julio Suniga, then leaders of the AMBALA and the Supervisory Group, respectively, as evidenced by the Manifesto of Support they signed and which was submitted to the DAR.[39] If at all, this means that AMBALA should be estopped from questioning the conversion of a portion of Hacienda Luisita, which its leader has fully supported.

(b) LIPCO and RCBC as Innocent Purchasers for Value

The AMBALA, Rene Galang and the FARM are in accord that Rizal Commercial Banking Corporation (RCBC) and Luisita Industrial Park Corporation (LIPCO) are not innocent purchasers for value. The AMBALA, in particular, argues that LIPCO, being a wholly-owned subsidiary of HLI, is conclusively presumed to have knowledge of the agrarian dispute on the subject land and could not feign ignorance of this fact, especially since they have the same directors and stockholders.[40] This is seconded by Rene Galang and AMBALA, through the PILC, which intimate that a look at the General Information Sheets of the companies involved in the transfers of the 300-hectare portion of Hacienda Luisita, specifically, Centennary Holdings, Inc. (Centennary), LIPCO and RCBC, would readily reveal that their directors are interlocked and connected to Tadeco and HLI.[41] Rene Galang and AMBALA, through the PILC, also allege that "with the clear-cut involvement of the leadership of all the corporations concerned, LIPCO and RCBC cannot feign ignorance that the parcels of land they bought are under the coverage of the comprehensive agrarian reform program [CARP] and that the conditions of the respective sales are imbued with public interest where normal property relations in the Civil Law sense do not apply."[42]

Avowing that the land subject of conversion still remains undeveloped, Rene Galang and AMBALA, through the PILC, further insist that the condition that "[t]he development of the land should be completed within the period of five [5] years from the issuance of this Order" was not complied with. AMBALA also argues that since RCBC and LIPCO merely stepped into the shoes of HLI, then they must comply with the conditions imposed in the conversion order.[43]

In addition, FARM avers that among the conditions attached to the conversion order, which RCBC and LIPCO necessarily have knowledge of, are (a) that its approval shall in no way amend, diminish, or alter the undertaking and obligations of HLI as contained in the [SDP] approved on

November 21, 1989; and (b) that the benefits, wages and the like, received by the FWBs shall not in any way be reduced or adversely affected, among others.[44]

The contentions of respondents are wanting. In the first place, there is no denying that RCBC and LIPCO knew that the converted lands they bought were under the coverage of CARP. Nevertheless, as We have mentioned in Our July 5, 2011 Decision, this does not necessarily mean that both LIPCO and RCBC already acted in bad faith in purchasing the converted lands. As this Court explained:

> 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." 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 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. (Emphasis supplied.)

In the second place, the allegation that the converted lands remain undeveloped is contradicted by the evidence on record, particularly, Annex "X" of LIPCO's Memorandum dated September 23, 2010,[45] which has photographs showing that the land has been partly developed.[46] Certainly, it is a general rule that the factual findings of administrative agencies are conclusive and binding on the Court when supported by substantial evidence.[47] However, this rule admits of certain exceptions, one of which is when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[48]

In the third place, by arguing that the companies involved in the transfers of the 300-hectare portion of Hacienda Luisita have interlocking directors and, thus, knowledge of one may already be imputed upon all the other companies, AMBALA and Rene Galang, in effect, want this Court to pierce the veil of corporate fiction. However, piercing the veil of corporate fiction is warranted "only in cases when the separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, such that in the case of two corporations, the law will regard the corporations as merged into one."[49] As succinctly discussed by the Court in*Velarde v. Lopez, Inc.*:[50]

> Petitioner argues nevertheless that jurisdiction over the subsidiary is justified by piercing the veil of corporate fiction. Piercing the veil of corporate fiction is warranted, however, only in cases when the separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, such that in the case of two corporations, the law will regard the corporations as merged into one. The rationale behind piercing a corporation's identity is to remove the barrier between the

> corporation from the persons comprising it to thwart the fraudulent and illegal schemes of those who use the corporate personality as a shield for undertaking certain proscribed activities.
>
> In applying the doctrine of piercing the veil of corporate fiction, the following requisites must be established: (1) control, not merely majority or complete stock control; (2) such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest acts in contravention of plaintiff's legal rights; and (3) the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of. (Citations omitted.)
>
> Nowhere, however, in the pleadings and other records of the case can it be gathered that respondent has complete control over Sky Vision, not only of finances but of policy and business practice in respect to the transaction attacked, so that Sky Vision had at the time of the transaction no separate mind, will or existence of its own. The existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations.

Absent any allegation or proof of fraud or other public policy considerations, the existence of interlocking directors, officers and stockholders is not enough justification to pierce the veil of corporate fiction as in the instant case.

And in the fourth place, the fact that this Court, in its July 5, 2011 Decision, ordered the payment of the proceeds of the sale of the converted land, and even of the 80.51-hectare land sold to the government, through the Bases Conversion Development Authority, to the qualified FWBs, effectively fulfils the conditions in the conversion order, to wit: (1) that its approval shall in no way amend, diminish, or alter the undertaking and obligations of HLI as contained in the SDP approved on November 21, 1989; and (2) that the benefits, wages and the like, received by the FWBs shall not in any way be reduced or adversely affected, among others.

A view has also been advanced that the 200-hectare lot transferred to Luisita Realty Corporation (LRC) should be included in the compulsory coverage because the corporation did not intervene.

We disagree. Since the 200-hectare lot formed part of the SDP that was nullified by PARC Resolution 2005-32-01, this Court is constrained to make a ruling on the rights of LRC over the said lot. Moreover, the 500-hectare portion of Hacienda Luisita, of which the 200-hectare portion sold to LRC and the 300-hectare portion subsequently acquired by LIPCO and RCBC were part of, was already the subject of the August 14, 1996 DAR Conversion Order. By virtue of the said conversion order, the land was already reclassified as industrial/commercial land not subject to compulsory coverage. Thus, if We place the 200-hectare lot sold to LRC under compulsory coverage, this Court would, in effect, be disregarding the DAR Conversion Order, which has long attained its finality. And as this Court held in *Berboso v. CA*,[51] "Once final and executory, the Conversion Order can no longer be questioned." Besides, to disregard the Conversion Order through the revocation of the approval of the SDP would create undue prejudice to LRC, which is not even a party to the proceedings below, and would be tantamount to deprivation of property without due process of law.

Nonethess, the minority is of the adamant view that since LRC failed to intervene in the instant case and was, therefore, unable to present evidence supporting its good faith purchase of the 200-hectare converted land, then LRC should be given full opportunity to present its case before the DAR. This minority view is a contradiction in itself. Given that LRC did not intervene and is, therefore, not a party to the instant case, then it would be incongruous to order them to present evidence before the DAR. Such an order, if issued by this Court, would not be binding upon the LRC.

Moreover, LRC may be considered to have **waived** its right to participate in the instant petition since it did not intervene in the DAR proceedings for the nullification of the PARC Resolution No. 89-12-2 which approved the SDP.

(c) Proceeds of the sale of the 500-hectare converted land and of the 80.51-hectare land used for the SCTEX

As previously mentioned, We ruled in Our July 5, 2011 Decision that 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 compulsory coverage, then HLI and its subsidiary, Centennary, should be liable to the FWBs for the price received for said lots. Thus:

> 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.

HLI, however, takes exception to the above-mentioned ruling and contends that it is not proper to distribute the unspent or unused balance of the proceeds of the sale of the 500-hectare converted land and 80.51-hectare SCTEX lot to the qualified FWBs for the following reasons: (1) the proceeds of the sale belong to the corporation, HLI, as corporate capital and assets in substitution for the portions of its land asset which were sold to third parties; (2) to distribute the cash sales proceeds of the portions of the land asset to the FWBs, who are stockholders of HLI, is to dissolve the corporation and distribute the proceeds as liquidating dividends without even paying the creditors of the corporation; and (3) the doing of said acts would violate the stringent provisions of the Corporation Code and corporate practice.[52]

Apparently, HLI seeks recourse to the Corporation Code in order to avoid its liability to the FWBs for the price received for the 500-hectare converted lot and the 80.51-hectare SCTEX lot. However, as We have established in Our July 5, 2011 Decision, the rights, obligations and remedies of the parties in the instant case are primarily governed by RA 6657 and HLI cannot shield itself from the CARP coverage merely under the convenience of being a corporate entity. In this regard, it should be underscored that the agricultural lands held by HLI by virtue of the SDP are no ordinary assets. These are special assets, because, originally, these should have been distributed to the FWBs were it not for the approval of the SDP by PARC. Thus, the government cannot renege on its responsibility over these assets. Likewise, HLI is no ordinary corporation as it was formed and

organized precisely to make use of these agricultural lands actually intended for distribution to the FWBs. Thus, it cannot shield itself from the coverage of CARP by invoking the Corporation Code. As explained by the Court:

> 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.[53] **It is, thus, paradoxical for HLI to shield itself from the coverage of CARP by invoking exclusive 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*.[54] 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. (Emphasis supplied.)

Considering that the 500-hectare converted land, as well as the 80.51-hectare SCTEX lot, should have been included in the compulsory coverage were it not for their conversion and valid transfers, then it is only but proper that the price received for the sale of these lots should be given to the qualified FWBs. In effect, the proceeds from the sale shall take the place of the lots.

The Court, in its July 5, 2011 Decision, however, takes into account, *inter alia*, the payment of taxes and expenses relating to the transfer of the land, as well as HLI's statement that most, if not all, of the proceeds were used for legitimate corporate purposes. Accordingly, We ordered the deduction of the taxes and expenses relating to the transfer of titles to the transferees, and the expenditures incurred by HLI and Centennary for legitimate corporate purposes, among others.

On this note, DAR claims that the "[l]egitimate corporate expenses should not be deducted as there is no basis for it, especially since only the auditing to be conducted on the financial records of HLI will reveal the amounts to be offset between HLI and the FWBs."[55]

The contention is unmeritorious. The possibility of an offsetting should not prevent Us from deducting the legitimate corporate expenses incurred by HLI and Centennary. After all, the Court has ordered for a proper auditing "[i]n order to determine once and for all whether or not all the proceeds were properly utilized by HLI and its subsidiary, Centennary." In this regard, DAR is tasked to "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." Also, it should be noted that it is HLI which shall shoulder the cost of audit to reduce the burden on the part of the FWBs. Concomitantly, the legitimate corporate expenses incurred by HLI and Centennary, as will be determined by a reputable accounting firm to be engaged by DAR, shall be among the allowable deductions from the proceeds of the sale of the 500-hectare land and the 80.51-hectare SCTEX lot.

We, however, find that the 3% production share should not be deducted from the proceeds of the sale of the 500-hectare converted land and the 80.51-hectare SCTEX lot. The 3% production share, like the homelots, was among the benefits received by the FWBs as farmhands in the agricultural enterprise of HLI and, thus, should not be taken away from the FWBs.

Contrarily, the minority is of the view that as a consequence of the revocation of the SDP, the parties should be restored to their respective conditions prior to its execution and approval, subject to the application of the principle of set-off or compensation. Such view is patently misplaced.

The law on contracts, *i.e.* mutual restitution, does not apply to the case at bar. To reiterate, what was actually revoked by this Court, in its July 5, 2011 Decision, is PARC Resolution No. 89-12-2 approving the SDP. To elucidate, it was the SDP, not the SDOA, which was presented for approval by Tadeco to DAR.[56] The SDP explained the mechanics of the stock distribution but did not make any reference nor correlation to the SDOA. The pertinent portions of the proposal read:

> MECHANICS OF STOCK DISTRIBUTION PLAN
>
> Under Section 31 of Republic Act No. 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, Tarlac Development Corporation hereby submits for approval a stock distribution plan that envisions the following**:[57] (Terms and conditions omitted; emphasis supplied)
>
> x x x x
>
> **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 collective bargaining agreement with management.[58]

Also, PARC Resolution No. 89-12-2 reads as follows:

> RESOLUTION APPROVING THE STOCK DISTRIBUTION PLAN OF TARLAC DEVELOPMENT COMPANY/HACIENDA LUISITA INCORPORATED (TDC/HLI)
>
> NOW THEREFORE, on motion duly seconded,
>
> **RESOLVED, as it is hereby resolved, to approve the stock distribution plan of TDC/HLI.**
>
> UNANIMOUSLY APPROVED.[59] (Emphasis supplied)

Clearly, what was approved by PARC is the SDP and not the SDOA. There is, therefore, no basis for this Court to apply the law on contracts to the revocation of the said PARC Resolution.

IV. Just Compensation

In Our July 5, 2011 Decision, We stated that "HLI shall be paid just compensation for the remaining agricultural land that will be transferred to DAR for land distribution to the FWBs." We also ruled that the date of the "taking" is November 21, 1989, when PARC approved HLI's SDP per PARC Resolution No. 89-12-2.

In its *Motion for Clarification and Partial Reconsideration*, HLI disagrees with the foregoing ruling and contends that the "taking" should be reckoned from finality of the Decision of this Court, or at the very least, the reckoning period may be tacked to January 2, 2006, the date when the Notice of Coverage was issued by the DAR pursuant to PARC Resolution No. 2006-34-01 recalling/revoking the approval of the SDP.[60]

For their part, Mallari, et al. argue that the valuation of the land cannot be based on November 21, 1989, the date of approval of the SDP. Instead, they aver that the date of "taking" for valuation purposes is a factual issue best left to the determination of the trial courts.[61]

At the other end of the spectrum, AMBALA alleges that HLI should no longer be paid just compensation for the agricultural land that will be distributed to the FWBs, since the Manila Regional Trial Court (RTC) already rendered a decision ordering "the Cojuangcos to transfer the control of Hacienda Luisita to the Ministry of Agrarian Reform, which will distribute the land to small farmers after compensating the landowners P3.988 million."[62] In the event, however, that this Court will rule that HLI is indeed entitled to compensation, AMBALA contends that it should be pegged at forty thousand pesos (PhP 40,000) per hectare, since this was the same value that Tadeco declared in 1989 to make sure that the farmers will not own the majority of its stocks.[63]

Despite the above propositions, We maintain that the date of "taking" is November 21, 1989, the date when PARC approved HLI's SDP per PARC Resolution No. 89-12-2, in view of the fact that this is the time that the FWBs were considered to own and possess the agricultural lands in Hacienda Luisita. To be precise, these lands became subject of the agrarian reform coverage through the stock distribution scheme only upon the approval of the SDP, that is, November 21, 1989. Thus, such approval is akin to a notice of coverage ordinarily issued under compulsory acquisition. Further, any doubt should be resolved in favor of the FWBs. As this Court held in *Perez-Rosario v. CA*:[64]

> It is an established social and economic fact that the escalation of poverty is the driving force behind the political disturbances that have in the past compromised the peace and security of the people as well as the continuity of the national order. To subdue these acute disturbances, the legislature over the course of the history of the nation passed a series of

> laws calculated to accelerate agrarian reform, ultimately to raise the material standards of living and eliminate discontent. Agrarian reform is a perceived solution to social instability. **The edicts of social justice found in the Constitution and the public policies that underwrite them, the extraordinary national experience, and the prevailing national consciousness, all command the great departments of government to tilt the balance in favor of the poor and underprivileged whenever reasonable doubt arises in the interpretation of the law.** But annexed to the great and sacred charge of protecting the weak is the diametric function to put every effort to arrive at an equitable solution for all parties concerned: the jural postulates of social justice cannot shield illegal acts, nor do they sanction false sympathy towards a certain class, nor yet should they deny justice to the landowner whenever truth and justice happen to be on her side. In the occupation of the legal questions in all agrarian disputes whose outcomes can significantly affect societal harmony, the considerations of social advantage must be weighed, an inquiry into the prevailing social interests is necessary in the adjustment of conflicting demands and expectations of the people, and the social interdependence of these interests, recognized. (Emphasis supplied.)

The minority contends that it is the date of the notice of coverage, that is, January 2, 2006, which is determinative of the just compensation HLI is entitled to for its expropriated lands. To support its contention, it cited numerous cases where the time of the taking was reckoned on the date of the issuance of the notice of coverage.

However, a perusal of the cases cited by the minority would reveal that none of them involved the stock distribution scheme. Thus, said cases do not squarely apply to the instant case. Moreover, it should be noted that it is precisely because the stock distribution option is a distinctive mechanism under RA 6657 that it cannot be treated similarly with that of compulsory land acquisition as these are two (2) different modalities under the agrarian reform program. As We have stated in Our July 5, 2011 Decision, RA 6657 "provides two (2) alternative modalities, i.e., land or stock transfer, pursuant to either of which the corporate landowner can comply with CARP."

In this regard, it should be noted that when HLI submitted the SDP to DAR for approval, it cannot be gainsaid that the stock distribution scheme is clearly HLI's preferred modality in order to comply with CARP. And when the SDP was approved, stocks were given to the FWBs in lieu of land distribution. As aptly observed by the minority itself, "[i]nstead of expropriating lands, what the government took and distributed to the FWBs were shares of stock of petitioner HLI in proportion to the value of the agricultural lands that should have been expropriated and turned over to the FWBs." It cannot, therefore, be denied that upon the approval of the SDP submitted by HLI, the agricultural lands of Hacienda Luisita became subject of CARP coverage. Evidently, the approval of the SDP took the place of a notice of coverage issued under compulsory acquisition.

Also, it is surprising that while the minority opines that under the stock distribution option, "title to the property remains with the corporate landowner, ***which should presumably be dominated by farmers with majority stockholdings in the corporation***," it still insists that the just compensation that should be given to HLI is to be reckoned on January 2, 2006, the date of the issuance of the notice of coverage, even after it found that the FWBs did not have the majority stockholdings in HLI contrary to the supposed avowed policy of the law. In effect, what the minority wants is to prejudice the FWBs twice. Given that the FWBs should have had majority stockholdings in HLI but did not, the minority still wants the government to pay higher just compensation to HLI. Even if it is the government which will pay the just compensation to HLI, this will also affect the FWBs as they will be paying higher amortizations to the government if the "taking" will be considered to have taken place only on January 2, 2006.

The foregoing notwithstanding, it bears stressing that the DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner. The landowner can file an original action with the RTC

acting as a special agrarian court to determine just compensation. The court has the right to review with finality the determination in the exercise of what is admittedly a judicial function.[65]

A view has also been advanced that HLI should pay the qualified FWBs rental for the use and possession of the land up to the time it surrenders possession and control over these lands. What this view fails to consider is the fact that the FWBs are also stockholders of HLI prior to the revocation of PARC Resolution No. 89-12-2. Also, the income earned by the corporation from its possession and use of the land ultimately redounded to the benefit of the FWBs based on its business operations in the form of salaries, benefits voluntarily granted by HLI and other fringe benefits under their Collective Bargaining Agreement. That being so, there would be unjust enrichment on the part of the FWBs if HLI will still be required to pay rent for the use of the land in question.

V. Sale to Third Parties

There is a view that since the agricultural lands in Hacienda Luisita were placed under CARP coverage through the SDOA scheme on May 11, 1989, then the 10-year period prohibition on the transfer of awarded lands under RA 6657 lapsed on May 10, 1999, and, consequently, the qualified FWBs should already be allowed to sell these lands with respect to their land interests to third parties, including HLI, regardless of whether they have fully paid for the lands or not.

The proposition is erroneous. Sec. 27 of RA 6657 states:

> SEC. 27. *Transferability of Awarded Lands.* - **Lands acquired by beneficiaries under this Act may not be sold, transferred or conveyed except through hereditary succession, or to the government, or to the LBP, or to other qualified beneficiaries for a period of ten (10)**

years: Provided, however, That the children or the spouse of the transferor shall have a right to repurchase the land from the government or LBP within a period of two (2) years. Due notice of the availability of the land shall be given by the LBP to the Barangay Agrarian Reform Committee (BARC) of the barangay where the land is situated. The Provincial Agrarian Coordinating Committee (PARCCOM), as herein provided, shall, in turn, be given due notice thereof by the BARC.

If the land has not yet been fully paid by the beneficiary, the right to the land may be transferred or conveyed, with prior approval of the DAR, **to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself.** Failing compliance herewith, the land shall be transferred to the LBP which shall give due notice of the availability of the land in the manner specified in the immediately preceding paragraph.

In the event of such transfer to the LBP, the latter shall compensate the beneficiary in one lump sum for the amounts the latter has already paid, together with the value of improvements he has made on the land. (Emphasis supplied.)

To implement the above-quoted provision, *inter alia*, DAR issued Administrative Order No. 1, Series of 1989 (DAO 1) entitled *Rules and Procedures Governing Land Transactions*. Said Rules set forth the rules on validity of land transactions, to wit:

II. RULES ON VALIDITY OF LAND TRANSACTIONS

A. The following transactions are valid:

1. Those executed by the original landowner in favor of the qualified beneficiary from among those certified by DAR.

2. Those in favor of the government, DAR or the Land Bank of the Philippines.

3. Those covering lands retained by the landowner under Section 6 of R.A. 6657 duly certified by the designated DAR Provincial Agrarian Reform Officer (PARO) as a retention area, executed in favor of transferees whose total landholdings inclusive of the land to be acquired do not exceed five (5) hectares; subject, however, to the right of pre-emption and/or redemption of tenant/lessee under Section 11 and 12 of R.A. 3844, as amended.

x x x x

4. Those executed by beneficiaries covering lands acquired under any agrarian reform law in favor of the government, DAR, LBP or other qualified beneficiaries certified by DAR.

5. Those executed **after ten (10) years from the issuance and registration of the Emancipation Patent or Certificate of Land Ownership Award.**

B. The following transactions are not valid:

1. Sale, disposition, lease management contract or transfer of possession of private lands executed by the original landowner prior to June 15, 1988, which are registered on or before September 13, 1988, or those executed after June 15, 1988, covering an area in excess of the five-hectare retention limit in violation of R.A. 6657.

2. Those covering lands acquired by the beneficiary under R.A. 6657 and executed within ten (10) years from the issuance and registration of an Emancipation Patent or Certificate of Land Ownership Award.

3. Those executed in favor of a person or persons not qualified to acquire land under R.A. 6657.

4. Sale, transfer, conveyance or change of nature of the land outside of urban centers and city limits either in whole or in part as of June 15, 1988, when R.A. 6657 took effect, except as provided for under DAR Administrative Order No. 15, series of 1988.

5. Sale, transfer or conveyance by beneficiary of the right to use or any other usufructuary right over the land he acquired by virtue of being a beneficiary, in order to circumvent the law.

x x x x (Emphasis supplied.)

Without a doubt, under RA 6657 and DAO 1, the awarded lands may only be transferred or conveyed after ten (10) years from the **issuance** and **registration** of the emancipation patent (EP) or certificate of land ownership award (CLOA). Considering that the EPs or CLOAs have not yet been issued to the qualified FWBs in the instant case, the 10-year prohibitive period has not even started. Significantly, the reckoning point

is **the issuance of the EP or CLOA**, and **not the placing of the agricultural lands under CARP coverage**.

Moreover, if We maintain the position that the qualified FWBs should be immediately allowed the option to sell or convey the agricultural lands in Hacienda Luisita, then all efforts at agrarian reform would be rendered nugatory by this Court, since, at the end of the day, these lands will just be transferred to persons not entitled to land distribution under CARP. As aptly noted by the late Senator Neptali Gonzales during the Joint Congressional Conference Committee on the Comprehensive Agrarian Reform Program Bills:

> SEN. GONZALES. **My point is, as much as possible let the said lands be distributed under CARP remain with the beneficiaries and their heirs** because that is the lesson that we have to learn from PD No. 27. If you will talk with the Congressmen representing Nueva Ecija, Pampanga and Central Luzon provinces, law or no law, **you will find out that more than one-third of the original, of the lands distributed under PD 27 are no longer owned, possessed or being worked by the grantees or the awardees of the same, something which we ought to avoid under the CARP bill that we are going to enact.**[66] (Emphasis supplied.)

Worse, by raising that the qualified beneficiaries may sell their interest back to HLI, this smacks of outright indifference to the provision on retention limits[67] under RA 6657, as this Court, in effect, would be allowing HLI, the previous landowner, to own more than five (5) hectares of agricultural land, which We cannot countenance. There is a big difference between the ownership of agricultural lands by HLI under the stock distribution scheme and its eventual acquisition of the agricultural lands from the qualified FWBs under the proposed buy-back scheme. The rule on retention limits does not apply to the former but only to the latter in view of the fact that the stock distribution scheme is sanctioned by Sec. 31 of RA 6657, which specifically allows corporations to divest a proportion of their

capital stock that "the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets." On the other hand, no special rules exist under RA 6657 concerning the proposed buy-back scheme; hence, the general rules on retention limits should apply.

Further, the position that the qualified FWBs are now free to transact with third parties concerning their land interests, regardless of whether they have fully paid for the lands or not, also transgresses the second paragraph of Sec. 27 of RA 6657, which plainly states that "[i]f the land has not yet been fully paid by the beneficiary, the right to the land may be transferred or conveyed, with prior approval of the DAR, to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself. Failing compliance herewith, the land shall be transferred to the LBP x x x." When the words and phrases in the statute are clear and unequivocal, the law is applied according to its express terms.[68] *Verba legis non est recedendum*, or from the words of a statute there should be no departure.[69]

The minority, however, posits that "[t]o insist that the FWBs' rights sleep for a period of ten years is unrealistic, and may seriously deprive them of real opportunities to capitalize and maximize the victory of direct land distribution." By insisting that We disregard the ten-year restriction under the law in the case at bar, the minority, in effect, wants this Court to engage in judicial legislation, which is violative of the principle of separation of powers.[70] The discourse by Ruben E. Agpalo, in his book on statutory construction, is enlightening:

> Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed. Where the law is clear and free from doubt or ambiguity, there is no room for construction or interpretation. **Thus, where what is not clearly provided in the law is read into the law by construction because it is more logical and wise, it would be to**

> **encroach upon legislative prerogative to define the wisdom of the law, which is judicial legislation. For whether a statute is wise or expedient is not for the courts to determine. Courts must administer the law, not as they think it ought to be but as they find it and without regard to consequences**.[71](Emphasis supplied.)

And as aptly stated by Chief Justice Renato Corona in his Dissenting Opinion in *Ang Ladlad LGBT Party v. COMELEC*:[72]

> Regardless of the personal beliefs and biases of its individual members, this Court can only apply and interpret the Constitution and the laws. Its power is not to create policy but to recognize, review or reverse the policy crafted by the political departments if and when a proper case is brought before it. Otherwise, it will tread on the dangerous grounds of judicial legislation.

Considerably, this Court is left with no other recourse but to respect and apply the law.

VI. Grounds for Revocation of the SDP

AMBALA and FARM reiterate that improving the economic status of the FWBs is among the legal obligations of HLI under the SDP and is an imperative imposition by RA 6657 and DAO 10.[73] FARM further asserts that "[i]f that minimum threshold is not met, why allow [stock distribution option] at all, unless the purpose is not social justice but a political accommodation to the powerful."[74]

Contrary to the assertions of AMBALA and FARM, nowhere in the SDP, RA 6657 and DAO 10 can it be inferred that improving the economic status of the FWBs is among the legal obligations of HLI under the SDP or is an imperative imposition by RA 6657 and DAO 10, a violation of which would justify discarding the stock distribution option. As We have painstakingly explained in Our July 5, 2011 Decision:

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.

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. 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 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. 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.

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**." 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.[75] 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.
>
> 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. (Citations omitted; emphasis in the original.)

This Court, despite the above holding, still affirmed the revocation by PARC of its approval of the SDP based on the following grounds: (1) failure of HLI to fully comply with its undertaking to distribute homelots to the FWBs under the SDP; (2) distribution of shares of stock to the FWBs based on the number of "man days" or "number of days worked" by the FWB in a year's time; and (3) 30-year timeframe for the implementation or distribution of the shares of stock to the FWBs.

Just the same, Mallari, et al. posit that the homelots required to be distributed have all been distributed pursuant to the SDOA, and that what merely remains to be done is the release of title from the Register of Deeds.[76] They further assert that there has been no dilution of shares as the corporate records would show that if ever not all of the 18,804.32 shares were given to the actual original FWB, the recipient of the difference is the next of kin or children of said original FWB.[77] Thus, they submit that since the shares were given to the same "family beneficiary," this should be deemed as substantial compliance with the provisions of Sec. 4 of DAO 10.[78] Also, they argue that there has been no violation of the three-month period to implement the SDP as mandated by Sec. 11 of DAO, since this provision must be read in light of Sec. 10 of Executive Order No. 229, the pertinent portion of which reads, "The approval by the PARC of a plan for

such stock distribution, and its initial implementation, shall be deemed compliance with the land distribution requirement of the CARP."[79]

Again, the matters raised by Mallari, et al. have been extensively discussed by the Court in its July 5, 2011 Decision. As stated:

> **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.

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.

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**.

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**." 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.

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 chosen to use the shares earmarked for farmworkers as reward system chips to water down the shares of the original 6,296 FWBs. 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)

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?

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 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.**

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. 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. (Citations omitted; emphasis in the original.)

Based on the foregoing ruling, the contentions of Mallari, et al. are either not supported by the evidence on record or are utterly misplaced. There is, therefore, no basis for the Court to reverse its ruling affirming PARC Resolution No. 2005-32-01 and PARC Resolution No. 2006-34-01, revoking the previous approval of the SDP by PARC.

VII. Control over Agricultural Lands

After having discussed and considered the different contentions raised by the parties in their respective motions, We are now left to contend with one crucial issue in the case at bar, that is, control over the agricultural lands by the qualified FWBs.

Upon a review of the facts and circumstances, We realize that the FWBs will never have control over these agricultural lands for as long as they remain as stockholders of HLI. In Our July 5, 2011 Decision, this Court made the following observations:

> 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 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. (Emphasis supplied.)

In line with Our finding that control over agricultural lands must always be in the hands of the farmers, We reconsider our ruling that the qualified FWBs should be given an option to remain as stockholders of HLI, inasmuch as these qualified FWBs will never gain control given the present proportion of shareholdings in HLI.

A revisit of HLI's Proposal for Stock Distribution under CARP and the Stock Distribution Option Agreement (SDOA) upon which the proposal was based reveals that the total assets of HLI is PhP 590,554,220, while the value of the 4,915.7466 hectares is PhP 196,630,000. Consequently, the share of the farmer-beneficiaries in the HLI capital stock is 33.296% (196,630,000 divided by 590,554.220); 118,391,976.85 HLI shares represent 33.296%. Thus, even if all the holders of the 118,391,976.85 HLI shares unanimously vote to remain as HLI stockholders, which is unlikely, control will never be placed in the hands of the farmer-beneficiaries. Control, of course, means the majority of 50% plus at least one share of the common shares and other voting shares. Applying the formula to the HLI stockholdings, the number of shares that will constitute the majority is 295,112,101 shares (590,554,220 divided by 2 plus one [1] HLI share). The 118,391,976.85 shares subject to the SDP approved by PARC substantially fall short of the 295,112,101 shares needed by the FWBs to acquire control over HLI. Hence, control can NEVER be attained by the FWBs. There is even no assurance that 100% of the 118,391,976.85 shares issued to the FWBs will all be voted in favor of staying in HLI, taking into account the previous referendum among the farmers where said shares were not voted unanimously in favor of retaining the SDP. In light of the foregoing

consideration, the option to remain in HLI granted to the individual FWBs will have to be recalled and revoked.

Moreover, bearing in mind that with the revocation of the approval of the SDP, HLI will no longer be operating under SDP and will only be treated as an ordinary private corporation; the FWBs who remain as stockholders of HLI will be treated as ordinary stockholders and will no longer be under the protective mantle of RA 6657.

In addition to the foregoing, in view of the operative fact doctrine, all the benefits and homelots[80] received by all the FWBs shall be respected with no obligation to refund or return them, since, as We have mentioned in our July 5, 2011 Decision, "the benefits x x x 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."

One last point, the HLI land shall be distributed only to the 6,296 original FWBs. The remaining 4,206 FWBs are not entitled to any portion of the HLI land, because the rights to said land were vested only in the 6,296 original FWBs pursuant to Sec. 22 of RA 6657.

In this regard, DAR shall verify the identities of the 6,296 original FWBs, consistent with its administrative prerogative to identify and select the agrarian reform beneficiaries under RA 6657.[81]

WHEREFORE, the *Motion for Partial Reconsideration* dated July 20, 2011 filed by public respondents Presidential Agrarian Reform Council and Department of Agrarian Reform, the *Motion for Reconsideration* dated July 19, 2011 filed by private respondent Alyansa ng mga Manggagawang Bukid sa Hacienda Luisita, the*Motion for Reconsideration* dated July 21, 2011 filed by respondent-intervenor Farmworkers Agrarian Reform Movement, Inc., and the *Motion for Reconsideration*dated July 22, 2011 filed by private respondents Rene Galang and AMBALA are **PARTIALLY GRANTED with respect to the option granted to the original farmworker-beneficiaries of Hacienda Luisita to remain with Hacienda Luisita, Inc.**, which is hereby **RECALLED** and **SET ASIDE**. The *Motion for Clarification and Partial Reconsideration* dated July 21, 2011 filed by petitioner HLI and the *Motion for Reconsideration* dated July 21, 2011 filed by private respondents Noel Mallari, Julio Suniga, Supervisory Group of Hacienda Luisita, Inc. and Windsor Andaya are **DENIED**.

The *fallo* of the Court's July 5, 2011 Decision is hereby amended and shall read:

PARC Resolution No. 2005-32-01 dated December 22, 2005 and Resolution No. 2006-34-01 dated May 3, 2006, placing the lands subject of HLI's SDP under compulsory coverage on mandated land acquisition scheme of the CARP, are hereby **AFFIRMED** with the following modifications:

All salaries, benefits, the 3% of the gross sales of the production of the agricultural lands, the 3% share in the proceeds of the sale of the 500-hectare

converted land and the 80.51-hectare SCTEX lot and the homelots already received by the 10,502 FWBs composed of 6,296 original FWBs and the 4,206 non-qualified FWBs shall be respected with no obligation to refund or return them. The 6,296 original FWBs shall forfeit and relinquish their rights over the HLI shares of stock issued to them in favor of HLI. The HLI Corporate Secretary shall cancel the shares issued to the said FWBs and transfer them to HLI in the stocks and transfer book, which transfers shall be exempt from taxes, fees and charges. The 4,206 non-qualified FWBs shall remain as stockholders of HLI.

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 500-hectare lot subject of the August 14, l996 Conversion Order and the 80.51-hectare lot sold to, or acquired by, the government as part of the SCTEX complex. After the segregation process, as indicated, is done, the remaining area shall be turned over to DAR for immediate land distribution to the original 6,296 FWBs or their successors-in-interest which will be identified by the DAR. The 4,206 non-qualified FWBs are not entitled to any share in the land to be distributed by DAR.

HLI is directed to pay the original 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 1,330,511,500 (PhP 500,000,000 + PhP 750,000,000 + PhP 80,511,500 = PhP 1,330,511,500) shall be deducted 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 1,330,511,500 proceeds of the sale of the three (3) aforementioned lots were actually used or spent for legitimate corporate purposes. Any unspent or unused balance and any disallowed expenditures 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 which is the date of issuance of 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 within the first 15 days after 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

BIENVENIDO L. REYES

Associate Justice Associate Justice

ESTELA M. PERLAS-BERNABE
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 Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

RENATO C. CORONA
Chief Justice

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

[2] The *Motion for Reconsideration* dated July 22, 2011 was filed by private respondents Rene Galang and AMBALA, through Atty. Romeo T. Capulong of the Public Interest Law Center, as lead counsel for Rene Galang and as collaborating counsel of Atty. Jobert Pahilga of SENTRA for AMBALA.

[3] G.R. No. 171101, July 5, 2011; hereinafter referred to as "July 5, 2011 Decision."

[4] PARC/DAR Motion for Reconsideration (MR), p. 7.

[5] PARC/DAR MR, p. 16.

[6] AMBALA MR, p. 51.

[7] AMBALA MR, pp. 55-60.

[8] Rene Galang and AMBALA MR, pp. 11-13.

[9] FARM MR, p. 47.

[10] Under PARC Resolution No. 89-12-2 dated November 21, 1989, then Secretary Miriam Defensor-Santiago approved the SDP of HLI/Tarlac Development Corporation (Tadeco).

[11] G.R. No. L-23127, April 29, 1971, 38 SCRA 429.

[12] G.R. No. L-28113, March 28, 1969, 27 SCRA 533.

[13] G.R. No. 138965, June 30, 2006, 494 SCRA 53.

[14] G.R. No. 85481-82, October 18, 1990, 190 SCRA 686.

[15] G.R. Nos. L-54558 and L-69882, May 22, 1987, 150 SCRA 144.

[16] Id. at 159.

[17] *League of Cities of the Phils. v. COMELEC*, G.R. Nos. 176951, 177499 and 178056, August 24, 2010, 628 SCRA 819, 833.

[18] *LCK Industries, Inc. v. Planters Development Bank*, G.R. No. 170606, November 23, 2007, 538 SCRA 634, 652; cited in *Land Bank of the Philippines v. Ong*, G.R. No. 190755, November 24, 2010, 636 SCRA 266, 280.

[19] *Brito, Sr. v. Dianala*, G.R. No. 171717, December 15, 2010.

[20] *Saludaga v. Sandiganbayan*, G.R. No. 184537, April 23, 2010, 619 SCRA 364, 374; citing AGPALO, STATUTORY CONSTRUCTION, 2003 p. 204 and *The Heirs of George Poe v. Malayan Insurance Company, Inc.*, G.R. No. 156302, April 7, 2009.

[21] G.R. No. 142618, July 12, 2007, 527 SCRA 405, 422.

[22] Citing *Pimentel v. COMELEC*, G.R. No. 126394, April 24, 1998, 289 SCRA 586, 597.

[23] Citing *Centeno v. Villalon-Pornillos*, G.R. No. 113092, September 1, 1994, 236 SCRA 197, 206.

[24] Citing *Castillo-Co v. Barbers*, G.R. No. 129952, June 16, 1998, 290 SCRA 717, 723.

[25] FARM MR, pp. 6-11, 30-36.

[26] Id. at 52.

[27] Id.

[28] Id.

[29] *Apostol v. CA*, G.R. No. 141854, October 15, 2008, 569 SCRA 80, 92; citing *Almuete v, Andres*, 421 Phil 522, 531 (2001).

[30] Id.; citing *Tolentino v. People*, G.R. No. 170396, August 31, 2006, 500 SCRA 721, 724 and *Suyat, Jr. v. Torres*, G.R. No. 133530, October 25, 2004, 441 SCRA 265, 274-275.

[31] See *C.F. Sharp Crew Management, Inc. v. Espanol, Jr.*, G.R. No. 155903, September 14, 2007, 533 SCRA 424, 438-439.

[32] We stated in Our July 5, 2011 Decision that if a qualified FWB will choose land distribution, he or she will get 6,886.5 square meters of agricultural land in Hacienda Luisita.

[33] DAR MR, p. 37.

[34] Id.

[35] See *Soriano v. Bravo*, G.R. No. 152086, December 15, 2010, 638 SCRA 403, 420.

[36] AMBALA MR, p. 67.

[37] Id.

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

[39] Id. at 80, Petition of HLI; id. at 944, Consolidated Reply of HLI; id. at 1327-1328.

[40] AMBALA MR, p. 76.

[41] Galang MR, p. 21.

[42] Id. at 22.

[43] AMBALA MR, p. 72.

[44] FARM MR, p. 94.

[45] *Rollo*, Vol. 3, pp. 3280-3323.

[46] Id. at 3428-3468.

[47] *Nicolas v. Del-Nacia Corp.*, G.R. No. 158026, April 23, 2008, 552 SCRA 545, 556.

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

[49] *Velarde v. Lopez, Inc.*, G.R. No. 153886, January 14, 2004, 419 SCRA 422, 431-432; citing *Tan Boon Bee & Co., Inc. v. Jarencio*, 163 SCRA 205 (1988) and *Yutivo Sons Hardware Co. v. CTA*, 1 SCRA 160 (1961).

[50] Id.

[51] G.R. Nos. 141593-94, July 12, 2006, 494 SCRA 583, 602.

[52] HLI MR, pp. 3-4.

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

[54] *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.

[55] DAR MR, p.33.

[56] As stated in the SDP:

"Under Section 31 of Republic Act No. 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, Tarlac Development Corporation hereby submits for approval a stock distribution plan that envisions the following: x x x" (*Rollo*, p. 1322)

[57] *Rollo*, p. 1322; Annex "AA."

[58] Id. at 3747-3748.

[59] Id. at 151.

[60] HLI MR, pp. 18-21.

[61] Mallari, et al. MR, pp. 3-4.

[62] AMBALA MR, p. 70.

[63] Id. at 71.

[64] G.R. No. 140796, June 30, 2006, 494 SCRA 66, 92-93.

[65] *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines*, G.R. No. 1664691, April 30, 2010.

[66] Joint Congressional Conference Committee on the Comprehensive Agrarian Reform Program Bills, May 26, 1988, pp. 45-46.

[67] SEC. 6. *Retention Limits.* - Except as otherwise provided in this Act, no person may own or retain, directly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall the retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: *Provided,* That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder; *Provided, further,* That original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

The right to choose the area to be retained, which shall be compact or contiguous, shall pertain to the landowner: *Provided, however,* That in case the area selected for retention by the landowner is tenanted, the tenant shall have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features. In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act. In case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a leaseholder to the land retained by the landowner. The tenant must exercise this option within a period of one (1) year from the time the landowner manifests his choice of the area for retention.

In all cases, the security of tenure of the farmers or farm workers on the land prior to the approval of this Act shall be respected.

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

[68] *Commissioner of Internal Revenue v. Central Luzon Drug Corp.*, G.R. No. 148512, June 26, 2006, 492 SCRA 575, 581.

[69] *Philippine Amusement & Gaming Corp. v. Philippine Gaming Jurisdiction, Inc., et al.*, G.R. No. 177333, April 24, 2009, 586 SCRA 658, 664-665.

[70] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 158885 & 170680, October 2, 2009, 602 SCRA 159, 169.

[71] R.E. Agpalo, STATUTORY CONSTRUCTION 125 (5th edition, 2003); citations omitted.

[72] G.R. No. 190582, April 8, 2010.

[73] AMBALA MR, pp. 65-66; FARM MR, p. 60.

[74] FARM MR, p. 60.

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

[76] Mallari, et al. MR, p. 3.

[77] Id.

[78] Id.

[79] Id.

[80] *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.

[81] See *Concha v. Rubio*, G.R. No. 162446, March 29, 2010, 617 SCRA 22, 31.