UST LAW REVIEW

LAND REFORM EXPLAINED

By Sen. ARTURO M. TOLENTINO

My countrymen:

The Congress has just approved in final form the land reform code. It is not my purpose tonight to discuss the merits or the defects of this bill. After amendment by the Senate, I voted in favor of its approval; and as a member of the conference committee for the Senate, I signed the conference report which ultimately led to its final approval by the Congress.

I have received many request for information regarding the effects of this bill, both upon tenants and landowners. I shall, therefore, endeavor tonight to explain as simply as I can the effects of this bill upon the people on whom it will operate.

ON TENANCY

The bill partially abolishes share tenancy, known as the "kasama" system. I say *partially*, because in case of fishponds, saltbeds, and lands planted to citrus, coconuts, coffee, durian, and other similar trees, share tenancy or the "kasama" system may still continue and will be governed by existing law, particularly R. A. No. 1199, as amended. The abolition of the "kasama" system will, therefore, affect mostly the rice and corn lands and some sugar and tobacco regions.

From the moment the President approves this bill, no person can legally enter into the "kasama" or share tenancy contract. Existing share tenancy contracts, however, may continue until the Government, through the National Land Reform Council which is set up in the bill, proclaim that all governmental agencies and machineries needed to implement the law are existing in a particular region or locality. The existing share tenancy contracts will terminate at the end of the agricultural year in which that proclamtion is made.

If a share tenancy or "kasama" contract is continued in violation of this law, the landowner who is found to have induced the

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* Text of Radio-TV speech delivered on July 14, 1963.

tenant to continue with the "kasama" system will be subject to criminal prosecution. In the original bill, both the tenant and the landowner may be penalized with imprisonment not exceeding one year. At my insistence, however, the bill was amended so that only the landowner will be punished, if he *induces* the tenant to remain in the "kasama" system. The tenant himself is not to be punished.

LEASEHOLD SYSTEM

Upon the abolition or termination of the share tenancy or "kasama" system, the relation between the landowner and the tenant will become one of leasehold. Under the leasehold system, the former tenant, who is to become a lessee, gets all the harvest and bears all the expenses. He must pay to the landowner or lessor a rental whose maximum is fixed by law.

The lessee is guaranteed stability of tenure; that is, he cannot be sent away from the land, except in the few cases mentioned by the law. His failure to pay the rental when it falls due is a ground for taking away the land from him. However, if such failure to pay rental is due to crop failure to the extent of three-fourths of the usual harvest as a result of some calamity, like typhoon, flood, drought, and so on, the lessee cannot be ousted from the land. He may pay his rental in the future.

The law fixes the highest amount of rental that can be charged by the landowner. It cannot be more than one-fourth of average yearly harvest during the last three years, after deducting the expenses for seedlings, harvesting, loading, hauling, and processing. The rental may be paid in money or in produce.

The landowner cannot require the lessee to file a bond, or make a deposit, or pay rental in advance. But he is given by law a priority or lien over such portion of the harvest as may be necessary for the payment of the rental in his favor. This right of the landowner is under an amendment which I introduced to give justice to him, since he cannot require the lessee to give a bond or pay rent in advance.

OTHER EFFECTS

In case the lessee should die or become permanently incapacitated, the lease will continue with some member of his immediate family who can cultivate the land personally. But the lessee may be deprived of the land when the owner or any of his parents or children will personally cultivate such land.

There are many cases now where the tenant under the "kasama" system occupies a home lot separate from the land he is cultivating. With the conversion of the "kasama" system to leasehold, he would have no more right to stay on this home lot. So as not to prejudice him, I introduced an amendment to the effect that he can continue to stay on that home lot which shall be considered as included in the leasehold.

It should be understood clearly that the bill does not impose a leasehold relationship upon the landowner and the former tenant against their will. They are permitted to agree upon some other lawful contract for the cultivation of the land, provided it is not the share tenancy or the "kasama" system.

It is only when they do not adopt any other lawful contract that the leasehold system is considered as existing between them. They have a right to change the leasehold at any time to any other contract which is not share tenancy.

Whatever contract may be entered into by the parties, however, the former tenant must always have the right to cultivate the landholding. The guarantee of the security of the former tenant's tenure has been so strengthened that the landowner cannot now ask for mechanization in the cultivation of his lands if the effect will be to deprive the tenants of their landholdings.

Those lands which are already mechanized, however, can continue with that form of cultivation. They are not required to come under the leasehold system. And lands under labor administration, there being no tenants but farm workers, are also exempt from the leasehold system.

TILLER-OWNER

The leasehold system is intended by the bill as an intermediate step towards ownership of the land by the person cultivating it. A lessee has less dependence upon the landowner; he has more responsibilities; he is the owner of everything he produces and shares it with no one; it is assumed that he will thus have more incentive to increase production for his own benefit. The leasehold stage may be considered as a training period for ultimate ownership.

The tenant or lessee may become the owner of the land he cultivates in any one of the following ways: (1) he may buy the land direct from the owner under an ordinary contract of sale, or (2) he may acquire the land under what is known as the right of

pre-emption or redemption, or (3) he may get the land through purchase from the government after the government has acquired it from the landowner.

The landowner may decide to sell his land and there may be a buyer willing to pay the price. Instead of the land being sold to the prospective buyer, the lessee has a preferrential right to buy it at the same price and under the same conditions. This is known as the right of pre-emption of the lessee. If the price is excessive, then the lessee can buy the land by pre-emption under reasonable terms and conditions.

If the land is sold to another without the knowledge of the lessee, who is thus unable to exercise the right of pre-emption, he may repurchase the land from the buyer at a reasonable price. This is known as his right of redemption.

THRU GOVERNMENT

The third method by which the lessee may acquire ownership of the land he cultivates is by purchase from the government, after the government has acquired the land from its owner.

The government in turn may acquire the land either by negotiated or voluntary sale by the owner, or by compulsory acquisition through expropriation proceedings in court.

When the landowner voluntarily agrees to sell his land to the government, they agree upon the price and the terms of payment. The contract is then submitted to the Court for approval. If any lessee, who expects to buy a lot from the land being purchased, thinks that the price agreed upon between the government and the landowner is excessive, then he can file an objection, and the price will have to be determined by the Court.

This was an amendment which I submitted, in order to avoid exhorbitant prices being paid by the government and the possibility of connivance between government authorities and the landowner in fixing the price. Since the lessees who will buy lots will have to pay the government on the basis of the cost of acquisition, they should have the right to object to excessive prices in the purchase by the government.

As an inducement to the landowner to sell his land voluntarily to the government, any profit he may acquire from the sale of the land will be exempted from the income tax or the capital gains tax. This was also n amendment which I introduced.

EXPROPRIATION

If a landowner does not want to sell his land voluntarily to the government, then it may be acquired through expropriation proceedings in Court. All idle or abandoned agricultural lands, whatever their area may be, whether big or small, may be expropriated. The only exception is when the owner himself subdivides the land and sells it in the form of family-size farm units to individuals within one year from the approval of the land reform code.

If the land is already under cultivation and its area is not more than 75 hectares, it cannot be expropriated. If it is more than 75 hectares, only the area in excess of 75 hectares can be expropriated.

There are cultivated lands which are not subject to expropriation, even if they exceed 75 hectares. These are lands on which there are no lessees, because only lands worked by lesses can be expropriated. Lands worked by farm labor or lands under labor administration cannot be expropriated. Lands lready under mechanized farming, where there are no lessees, are also exempt from expropriation.

In general, therefore, the lands in excess of 75 hectares that can be expropriated are only those which were formerly under share tenancy or the "kasama" system but which, after the approval of the land reform code, will come under the leasehold system. Fishponds, saltbeds, and lands planted to citrus, coconuts, cacao, coffee, durian and other similar trees, are not required to come under the leasehold system; hence, if they are not worked by lessees, they are free from expropriation.

In order that agricultural land subject to expropriation may be acquired by the government, it is necessary that at least one-third of the lessees on the land should petition the government that the land be expropriated. This was an amendment which, together with Senators Tañada and Sumulong, I submitted, in order that the government may not arbitrarily expropriate lands where the lessees are not willing or ready to buy the land after expropriation.

The law fixes an order of priority in the expropriation of lands. Before any cultivated land can be expropriated, abandoned or idle lands in the region or district must first be expropriated. Then cultivated lands of larger area are to be expropriated ahead of those of smaller area.

OWNER'S RIGHT

Upon the filing of expropriation proceedings, the owner's rights over his land are immediately curtailed. He cannot sell or dispose of any portion of the land, except to the lessees; he cannot enter into any contract which might defeat the purpose of the land reform code; and he cannot file or prosecute any ejectment proceeding against any lessee.

When the Court orders the expropriation, the owner whose land is expropriated is entitled to the payment of just compensation. In decisions rendered by the Supreme Court in the past, just compensation in expropriation cases has been held to be the fair market value of the property. When the land is being worked by lessees, the annual lease rental income shall be considered by the court along with other factors in determining the just compensation.

In the original bill, the rental value was made the exclusive basis for determining just compensation, to be capitalized at 6%. Since there have decisions of the Supreme Court that rental value is not a safe basis for determining just compensation, I introduced the amendment which would allow the Court to determine just compensation as provided in the Constitution, but requiring that the rental value should also be taken into account as one of the factors in that determination. This was intended to make the law conform to the Constitution as interpreted by the Supreme Court.

The just compensation is not to be paid wholly in cash to the landowner. Only 10% is to be in money. The balance is to be paid in bonds of the Land Bank which is being set up by the law. However, instead of setting 90% in bonds, the landowner may choose to receive not more than 30% in the form of shares of stock of the Land Bank. As in negotiated purchase, the profits from the payment of just compensation in expropriation are exempt from the tax on capital gains.

FARMER'S RIGHTS

After the government has acquired the land, whether by negotiated purchase or expropriation, it shall survey and subdivide the land into farm-size lots, and then title the lots. The lots may not correspond to the various parcels of land actually cultivated by the lessees. The government will determine the size of the lots into which the land will be subdivided.

These lots will then be sold to farmers in the following order of preference: (1) children or parents of the former owner who will cultivate the land personally with the aid of labor from their immediate household; (2) actual occupants personally cultivating the land either as lessees or otherwise (even squatters) with respect to the area under the cultivation; (3) actual cultivators of uneconomic size farms with respect to idle or unoccupied lands to which they may be transferred; (4) owners-operators of uneconomic size farms; and (5) others, taking into account the needs and qualifications of the applicants. It is possible under this order of preference that a lessee may get a lot other than that which he actually cultivates.

The price of resale of lots to the farmers shall be the price paid by the government plus 6% per annum. No other charge will be imposed in addition to this. The bill originally provided for 8% to be added to the acquisition cost, plus the expenses for the survey, subdivision and titling of the land. By an amendment introduced by Senator Tañada and myself, we pulled down the interest from 8% to 6%, and eliminated the expenses for survey, subdivision and titling as a charge on the farmer, making the government bear that extra burden.

As part of an amendment I introduced, the resale price is to be paid by the farmer-purchaser for a period of not more than 25 years, at his option.

If a lessee entitled to acquire a lot does not want to buy it but prefers to remain a lessee, he may do so. He will pay the government the rental that he used to pay the landowner. This rental will be applied to the payment of the 6% added to the acquisition cost, and if there is any excess, such excess shall be applied as part payment of the resale price of the lot, as if he were actually paying for the lot, so that when he decides to buy the lot, he would already have paid some portion of the resale price.

GOVERNMENT ASSISTANCE

For the purpose of helping the former tenant bear the financial burdens incident to his becoming a lessee and later an owner, the ACCFA is reorganized and is to be known as the Agricultral Credit Administration. It will lend funds to farmers' cooperatives and to individual farmers to help them in the cultivation of the land and increasing their income.

The interest that can be charged on all kinds of loans will not be more than 8% per annum. This was originally 12% per an-

num. But upon motion of Senator Tañada, which I strongly supported on the floor, it was reduced to the present 8% per annum, so that the farmer may not be overburdened with too high an interest charge upon the loans he will get from the ACA.

Any document executed by farmers borrowing money from the ACA is exempted from notarial fees when ratified or acknowledged before a justice of the peace, and also exempted from registration fees in the office of the register of deeds.

POSITION ON BILL

This, in brief and in simple terms, is the land reform that is intended to be brought about in the bill that the Congress has just approved. In the early stages of its discussion, I severely critized many of its original provisions. In its original form, I would not have hesitated to vote against the bill, largely because there were many provisions that violated the Constitution.

After thorough discussion, however, the bill was amended in many places, and as amended, I voted in favor of its approval. I submitted so many amendments that Senate President Ferdinand Marcos, in his closing speech on the last day of the special session said that Senator Tañada and myself should have been made co-authors of the bill because of the number of amendments we had introduced into the measure.

I was never against the objective of the bill from the very beginning. I was for land reform. In fact, when I was majority floor leader in the House of Representatives during the Presidency of Ramon Magsaysay, I contributed greatly to the approval of the Land Reform Act of 1955 in the lower House. I have myself authored a law for the expropriation of lands in Manila to be subdivided and resold at cost to tenants. Hence, I agreed with the objective of this bill to make the tenants ultimately owners of the lands that they cultivate.

But I objected to the methods contained in provisions which I considered as contrary to the Constitution. To support a measure which, I am convinced, is unconstitutional, would not only be a violation of my own conscience but also a violation of my oath of office as a Senator, in which I swore to defend and uphold the Constitution of the Philippines.

Besides, to approve an unconstitutional land reform bill would be deception of the highest order, for once the bill is contested in court and declared unconstitutional, its objectives cannot be real-

ized and the soaring hopes of small farmers who have looked upon it for redemption will be painfully blasted to pieces.

Because of my adherence to the Constitution, however, some people thought that I was against land reform. Nothing can be farther from the truth. To those people, it is inconceivable that man may agree in objectives but differ in the means and methods of reaching and realizing them.

To them Rizal would be branded as an enemy of freedom, because he disagreed with Bonifacio on armed revolt as a means of attaining our national emancipation. To them Quezon would be an advocate of colonialism, because he sought the rejection of the first independence law approved by the American Congress for the Philippines, known as the Hare-Hawes-Cutting law.

Fortunately, members of the Senate made a good job of improving the bill with numerous amendments. The bill is far from being perfect, but the areas for a possible declaration of unconstitutionality have been reduced to a bare minimum. I sincerely believe that it has now a very good chance of withstanding a test of constitutionality in Court. That is why I voted for its approval.