

VICTORY IN HACIENDA VELEZ MALAGA: A STORY OF WILLPOWER AND SACRIFICE FOR LAND RIGHTS

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Hacienda Velez-Malaga in Negros Occidental is where the Task Force Mapalad recently fought a decisive battle for land rights against an influential businessman-landowner, marking a major victory for the agrarian reform beneficiaries of the hacienda as well as land rights petitioners in other landholdings facing similar crisis, and advocates of genuine agrarian reform.

The story of that struggle is worth sharing because of the rich experience and potential lessons that may be derived from it.

Located in barangay (village) Robles, municipality of La Castellana in central Negros Occidental, Hacienda Velez Malaga is owned by Roberto Cuenca, a businessman-landowner who is well-connected in the corridors of power. His son was former husband of the daughter of Congressman Ignacio Arroyo, brother-in-law of the President and also known as an anti-Comprehensive Agrarian Reform Program (CARP) landowner. Cuenca and Rep. Arroyo are also colleagues in a coalition of landowners formed in 2005 to oppose CARP in the province.

THE LAND DISPUTE



The Department of Agrarian Reform (DAR) placed the hacienda under CARP in 1996 but Cuenca subsequently filed a case before the regional trial court (RTC) to annul the CARP coverage. He also dismissed from their jobs the farm workers who applied as CARP beneficiaries.

But DAR went on with the process of identifying and qualifying the farmer beneficiaries. It conducted the final process in 2000 at the town plaza, declaring 122 potential beneficiaries as claimants to the property.

By the time TFM came to Hacienda Velez Malaga around the same year, the farmer beneficiaries were already steeped in a land dispute with Cuenca.

The DAR personnel had been slapped earlier with contempt charges, constraining them to make any moves until the annulment case was decided. The potential beneficiaries were

waiting to become actual beneficiaries, but they did not know how long the court case would last.

Meanwhile, Cuenca continued to cultivate and benefit from the sugar plantation. His legal complaint reflected the usual tactic among landowners to delay or stop CARP implementation. At most, landowners' money could influence court decisions.

But not all farm workers wanted to remain under the control of Cuenca forever. With support from TFM, potential beneficiaries formed themselves into the Hacienda Velez Malaga Agrarian Reform Beneficiaries Organization (HAVEMARBO) and began participating in LTI campaigns to ask DAR to continue CARP implementation in the land. Most campaigns were in protest to DAR's reluctance to speed up processing of their claim folders.

Soon the DAR submitted the completed claim folders to the Land Bank, which then conducted a valuation of Cuenca's property and issued a memorandum of valuation.

In April 2002, the DAR issued a collective Certificate of Land Ownership Award (CLOA) in the name of the 122 beneficiaries and covering 144.5 hectares of the total 446 hectares.

But the awarding of the land only proved to be in paper. Six months later since CLOA was issued, DAR had not yet installed the farmer beneficiaries, citing a pending court case including Cuenca's petition to the same RTC to cancel the CLOA.



Without work and food for their families, the farmers decided to install themselves in their property. In October 2002, they occupied 10 hectares of the awarded land also to preempt Cuenca from cultivating the land for another season.

"We had no other choice but to legally claim our lands. Having our land meant having food on the table and security for our families," says Jose Gerry Cahilig, a CLOA holder and peasant organizer in the hacienda.

Cuenca filed a case of forcible entry before the municipal trial court, and the RTC thereafter issued an order for the cancellation of the CLOA. The Register of Deeds quickly cancelled the CLOA despite a pending motion for reconsideration filed by the DAR.

The farmer beneficiaries, however, successfully held on to the occupied portion of their land to this day.

THE LEGAL BATTLE

By this time, the struggle for land rights in the hacienda had already shifted to the courts.

Cuenca's CARP annulment case had gained ground after the RTC issued an injunction against CARP implementation. The municipal trial court, meanwhile, affirmed the forcible entry charge against the farmer beneficiaries. The cases were elevated to the Court of Appeals.

According to Sections 55 and 68 of the Comprehensive Agrarian Reform Law of 1987, original and exclusive jurisdiction over agrarian matters lies with the DAR, and the courts cannot issue an injunction or restraining order against CARP and its implementing agencies.

This became the basis of TFM and DAR to maintain a close alliance against Cuenca's legal complaints. The cases lodged in court indicate serious threats to the implementation of CARP, especially the use of courts to derail or block CARP and the violation of local courts on jurisdiction.



TFM and DAR sought a dialogue with then Chief Justice Hilario Davide of the Supreme Court to discuss the issue of jurisdiction based on experiences in Hacienda Velez Malaga and other contentious haciendas of Negros Occidental.

The dialogue resulted in the issuance of the Supreme Court of Administrative Circular No. 29, Series of 2002, which noted the increasing number of

complaints on matters of jurisdiction over agrarian reform matters.

In the said circular, the High Court reminded the trial judges to avoid any conflict of jurisdiction with the DAR and the DENR. "Conflict in jurisdiction must be avoided to prevent delay in the resolution of agrarian problems," the Supreme Court stressed.

A breakthrough in the legal battle for land rights came on September 23, 2004 when the third division of the Supreme Court, deciding on a land dispute in another hacienda of Cuenca, came out with the following ruling:

"All controversies on the implementation of the Comprehensive Agrarian Reform Program (CARP) fall under the jurisdiction of the Department of Agrarian Reform (DAR), even though they raise questions that are also legal or constitutional in nature. All doubts should be resolved in favor of the DAR, since the law has granted it special and original authority to hear and adjudicate agrarian matters." (*Department of Agrarian Reform vs. Roberto Cuenca and Hon. Alfonso B. Combong Jr.*)

Cuenca filed a motion for reconsideration, but the Supreme Court denied it. The Supreme Court ruling was entered in the Entries of Judgment and became final and executory on March 9, 2005.

Consequently, on December 15, 2005, the RTC in La Carlota set aside and nullified all its decisions on the Velez Malaga case, including the injunction order and the cancellation of CLOA. It thus dismissed Cuenca's CARP annulment case.

On June 29, 2006, the RTC also denied Cuenca's subsequent motion for reconsideration.

FARMERS ASSERT THEIR RIGHTS

The landmark Supreme Court rule and the final dismissal of Cuenca's CARP annulment case at the RTC removed legal impediments to the installation of the 122 CLOA holders to the property. The farmer beneficiaries, as the rules affirmed, were on legal and moral high ground to assert their rights to their own land.

In July 2005, Nasser Pangandaman replaced Secretary Rene Villa, who were among the 10 Cabinet officials who resigned at the height of the "Hello Garci" wiretapped conversation involving the President in election fraud. TFM farmer beneficiaries wasted no time to hold dialogues with the OIC secretary for their immediate installation in their property.

This would mark the beginning of deferred installations and renege promises.

In December 2005, Pangandaman said it was not possible to get police security for the installation because they were all deployed to the Southeast Asian Games, of which Negros Occidental was one of the venues.

In January 2006, Pangandaman again deferred the installation, citing an alleged coup threat against the Arroyo administration. In March, top DAR officials failed to show up in a scheduled planning meet in Iloilo City in central Philippines, saying they had to attend in the budget hearing in Congress.

TFM continued the pressure on DAR to perform its social obligation because further delay in the installation would spell more poverty and hunger to the farmers.

In September 2006, Pangandaman finally issued a Special Order directing the DAR director for Western Visayas to "use all means and resources to ensure" CARP implementation, including installation of farmer beneficiaries, in Hacienda Velez Malaga.

But bureaucratic problems came in the way again. The DAR regional office ignored the order. The DAR provincial office was willing to install but lacked the support. The police provincial director refused to provide security. Specifically, the police station chief of La Castellana was biased toward the landowner.

The biggest problem, however, was that Pangandaman himself would not personally install the farmer beneficiaries. Thus, the installations set in October and November did not push through.

This series of failed installations prompted the farmer beneficiaries to hold protest actions in front of the DAR central office in Manila. Pangandaman was forced to set a schedule on December 7, only to abort it on the morning of the same day when things were set for the installation.

Soon reports from classified sources came in that Cuenca had called up Congressman Ignacio Arroyo, who in turn called up Pangandaman and asked him to abort the installation. Arroyo and Pangandaman denied the reports but the farmer beneficiaries tended to believe it was the case because this was not the first time that such situation happened.

THE PANGANDAMAN-CUENCA TALKS

In an emergency meeting with TFM on the night of December 7, 2006, Pangandaman claimed he aborted the installation to avoid bloodshed. He also asked for time to talk to Cuenca.

A few days later, Pangandaman echoed Cuenca's compromise offer to the farmer beneficiaries: only 60 hectares of the CLOA-covered 144.5 hectares and another plot outside the awarded land to replace the remaining hectares.

But the Hacienda Velez Malaga farmer beneficiaries would not budge on three grounds.

First, Cuenca had no more legal right to the 144.5 hectares and therefore was not in any legal position to make any offer.

Second, Cuenca had made a similar offer in December 2005 through his legal counsel, which he himself reneged on. The farmer beneficiaries, based on Cuenca's offer, were supposed to be initially installed in the vacant one-hectare portion of the 60 hectares, and would be allowed to occupy the rest after the standing crops had been harvested. But on the installation day, loyal followers and private army had set up barricades to prevent the entry of TFM farmers.

Third, there was no need for compromise offers because the farmer beneficiaries are already the owners of the land. The plain issue at hand was the installation of the farmers.

Nonetheless, Pangandaman asked that he be allowed to visit the hacienda to see for himself the place Cuenca was offering. Pangandaman set the visit on January 10, 2007, which would again be aborted.

Pangandaman's frequent coups against his own commitments since 2005 consolidated the farmer beneficiaries' doubts on the OIC secretary's intention to install them. They also had no

idea how far the talks between Pangandaman and Cuenca had reached. They felt that unless they took a decisive action, Pangandaman would likely sell them out to Cuenca.

On January 18, 2007, TFM obtained a copy of a Memorandum of Understanding (MOU) between Cuenca and Pangandaman stipulating the cancellation of the CLOA of the 122 farmer-beneficiaries, the issuance of another CLOA in favor of Cuenca's farm workers, and the eviction of the CLOA holders from the 10 hectares that they occupy. The MOU had a signature of Cuenca but not of Pangandaman.

For the farmers, the MOU confirmed their suspicion that they were being sold out, although Pangandaman denied any knowledge of the MOU. Nonetheless, the farmers decided on a resolute action: self-installation. They said they had no other choice but to install themselves if Pangandaman did not have intention to install them at all in their land.

Thus, on January 24, the farmer beneficiaries and their families occupied a nearby five-hectare plot of their land.

DEATH OF A FARMER BENEFICIARY

Experience taught the farmer beneficiaries that Cuenca's armed men would come and violently disperse them. They would not let that happen again without the world seeing the atrocities against them. This time, the farmer beneficiaries were able to capture on video the attack and indiscriminate firing of Cuenca's armed men on them.

At around 2 a.m. the next day, armed men came to the house of CLOA holder Pepito Santillan Sr. inside the occupied 10 hectares. One of them entered Santillan's yard and threw bottles of gasoline on the roof. The gunman immediately shot dead Santillan when the latter came out to check the noise. The armed men subsequently strafed the adjacent houses as they left on foot.

Pangandaman was quick to blame TFM and the farmer beneficiaries for the violent incident. In media reports, he said the farmer beneficiaries provoked Cuenca's followers and that the killing of Santillan was the result of that provocation.

"They did not have the right to self-install. I really wanted to avoid bloodshed that's why they were not immediately installed," Pangandaman was quoted as saying in media reports.

Days later, the farmers camped out in front of the DAR central office. Television network ABC 5 aired the amateur video of the shooting incident. Calls for Pangandaman's resignation began as civil society groups closed ranks to support the struggle of Hacienda Velez Malaga farmers.

The struggle for land rights began to gain momentum.

Now under great pressure, Pangandaman scheduled another installation on February 2. The farmers lifted their campout and went back to the hacienda to prepare for the installation.

But in the same period, President Arroyo assigned presidential adviser Rafael Coscolluela to talk to Cuenca and find a win-win solution to the case, thereby forestalling the February 2 installation.

“I am giving myself one more week. We have to find a win-win solution. But if Cuenca refuses the installation, the DAR must find a way to enforce the law,” Coscolluela, himself a native of Negros Occidental, said in an interview with a television news program.

As expected, nothing came out of the talks. Cuenca wanted to place the farmer beneficiaries in a hilly, steep and unproductive portion of the hacienda, which the farmer beneficiaries rejected. For them, the issue of installation was non-negotiable. It was high time the government enforce the rule of law in Hacienda Velez Malaga.



THE HUNGER STRIKE

On February 19, 2007, a total of 25 Hacienda Velez Malaga farmers -- 17 men and 8 women -- came back to Manila to heighten calls for their installation.

They presented a video disk of the January 24 shooting incident to the Commission on Human Rights and. The next day they held a press conference asking President Arroyo to personally take charge of their installation. Then they went back in front of the DAR central office, this time determined to maintain their campout until after the CARP beneficiaries are installed.

On February 21, the farmer beneficiaries had their heads shaved as a statement of protest against Pangandaman. “Shame on you,” was the message the women wanted to tell him as they had their heads shaved.

The next day, when they got no reaction from Pangandaman, the farmer beneficiaries announced the start of what they called as their hunger strike “to death.”

By Day 7 of the protest, 16 of the hunger strikers were rushed brought to the hospital – nine of them in the morning and seven in the afternoon -- for severe dehydration and loss of consciousness. Once revived by dextrose, they immediately went back to the camp site to resume the hunger protest.

The mass media began to take notice of the hunger strike, thereby putting the struggle for land rights in Hacienda Velez Malaga into national attention. A top-rating early evening television news tackled the case while showing the video footage of the shooting and the sunken faces of the women hunger strikers in front of the DAR central office. Print, radio and online media groups also consistently reported on the unfolding strike.

Apart from the media, other sectors such as civic and religious groups, solidarity networks and political groups, individuals and simple well-wishers, also started frequenting the hunger strike camp. Doctors from the non-government Medical Action Group came everyday to monitor the protesters' health conditions. Priests from the Ateneo de Manila University also visited to give spiritual talks.

As public support grew, Pangandaman had no other choice but to announce to media the farmer beneficiaries' installation but refused to set a date. Members of media waited when he would install.

INSTALLATION ON WOMEN'S DAY

Pangandaman later announced he would install the farmer beneficiaries on March 8, as the whole nation marked Women's Day. The schedule would have been suitable as the women hunger strikers have already become the faces of struggle for land and justice.

The hunger strikers took some porridge as a confidence-building gesture. The media trooped to Negros Occidental and waited for Pangandaman's arrival in La Castellana. A platoon of police Regional Mobile Group (RMG) was deployed to secure the hacienda, where hundreds of pro-Cuenca supporters had converged to oppose the installation. A company of Army soldiers was on standby, ready to take orders from Pangandaman to enter the hacienda.

Pangandaman arrived around 7 a.m. in Bacolod City and proceeded to DAR provincial office where he stayed until noon without facing the media. After lunch he went to a hotel to meet with the provincial governor who was angry because the DAR secretary allegedly failed to coordinate the installation with him.

Finally, Pangandaman announced that there would be no installation to avoid violence and bloodshed.

The foiled installation impelled more groups to call for the immediate installation of farmers and even for Pangandaman's resignation.

Catholic bishops joined the call for installation, affixing their names in a public statement published in a major daily calling for the government to "enforce the rule of law in Hacienda Velez-Malaga" and to "install the farmers now."

Moreover, international allies in Europe and Asia of civil society organizations supporting the farmers' cause also asked the President to end human rights violations against farmers and land rights advocates.

The hunger strike was already entering its 20th day at that time. The government was facing a critical moment because death from hunger strike usually occurred on the 30th day. The Arroyo administration, marred by the President's plummeting public approval rate and persistent charges of election fraud, could not afford another crisis in the death of a hunger striker due to government's failure to enforce the law.

By this time, five of the hunger strikers had written their last will. Some of them had refused to be taken to the hospital and their health condition had become critical. One woman hunger striker already showed signs of hallucination, a severe effect of hunger.

Malacañang apparently had been monitoring the situation of the hunger strikers. An indication of this was the visit of the secretary of social works and development who offered them powdered energy drinks. When the farmers refused, the secretary brought them gallons of water, tissues, beddings, and other items needed in the camp site. She also had a government doctor visit the camp every day to monitor the health of hunger strikers.

That same time, Pangandaman had not made a single visit to the hunger strikers. He however sent one of his undersecretaries to try another dialogue with Cuenca after the failed March 8 installation and then to make recommendations to Malacañang.

This undersecretary realized that Cuenca was just giving government officials a run around. Seeing that three of the hunger strikers were already critical, the undersecretary recommended the immediate and non-negotiable installation of the farmer beneficiaries.

On March 22, on the 29th day of the farmers' hunger strike, DAR installed 57 of 122 farmer beneficiaries in 53 hectares of the property.

It was a partial victory, but nevertheless it was a significant and decisive victory considering the 11-year court battle, countless protest actions, and the loss of lives and properties amid the tremendous resources, connection, and influence of the landowner. The case is going to a full resolution.

POST-INSTALLATION

Pangandaman issued a memorandum for post-installation instructions to regional and provincial DAR officials to ensure installation of the farmers.

But the order failed to facilitate the farmers' installation. Local DAR officials showed reluctance following reactions from Cuenca's supporters on the installation plan for HAVEMARBO.

On April 30, TFM farmers entered the five hectares where they were installed last March 22 and conducted some weeding. Cuenca's workers reacted and tried to attack, but the regional mobile police intervened. The police also told TFM farmers to stop weeding to avoid conflict.

When asked to intervene, provincial agrarian reform officer (PARO) Stephen Leonidas said the farmers could cultivate the plot but asked them to refrain from doing so because of an ongoing negotiation on standing crops. TFM farmers asked DAR to work out on a scheme to allow them to work on their land because their families are hungry.

Local DAR officials prohibited the TFM farmers from cultivating their own land. On the other hand, Cuenca has repeatedly ignored the DAR's order for him to stop cultivating the land. The military contingent that was supposed to maintain peace in the area also pulled out.

The farmers' request to be allowed to cultivate their farms for food and to be provided police protection were not met. On June 4, as government continues to ignore their request, TFM farmers entered five hectares of their property to plant.

Security guards of Cuenca soon shot at the farmers as regional mobile policemen merely looked on. Two TFM farmers, Alejandro Garcesa and Ely Tupas, were killed and six others were wounded from the attack. The fatalities were among those who joined the month-long hunger strike in Manila in February.

THE SEPTEMBER 2007 PROTESTS

By early September, HAVEMARBO farmers joined TFM farmers in other parts of the country to protest in front of the DAR Central Office in Manila. They demanded government to complete their installation in their lands and provide necessary support services to sustain their land tenure.

The farmers also pitched camp outside the DAR despite threats of dispersal. On September 5, police violently dispersed the farmers, hurting HAVEMARBO member Robert Diamante and others. The farmers, however, stood firm to maintain their camp.

TFM pursued dialogues with DAR officials to push for the farmers' installation. On September 10, TFM obtains from DAR a draft memorandum of agreement for settlement of the dispute in Velez-Malaga. TFM make suggestions for revision of the draft MOA.

By mid-September, the final draft of the MOA has been signed by landowner Roberto Cuenca, Secretary Pangandaman, and Velez-Malaga farmer-leader Gregorio Paclibar.

The final agreement provided that a total of 93 hectares will go to the TFM farmers, including the standing crops. The TFM farmers would also paid by Cuenca PhP 10,000 (EURO 159) per hectare for use of the land outside of the 53 hectares. All civil cases related to the land dispute would be dropped.

A signing ceremony was held on September 20, 2007 at the municipal hall of La Castellana. DAR and local government officials witness the signing of MOA by leader of Cuenca's farmer group.

TFM farmers held a separate thanksgiving ceremony inside the 53 hectares. Cuenca's lawyer later turned over PhP 143,000 (EURO 2,270) to the TFM farmers as payment by Cuenca for the use of their land. The security guards dismantled their guard house inside the 53 hectares.

The dispute in Hacienda Velez-Malaga is over.

LESSONS OF THE STRUGGLE

The struggle was a victory not only for the farmer beneficiaries of Hacienda Velez Malaga but for all defenders of land rights in the Philippines and also in many parts of the world where others face similar crisis.

The case was unprecedented in the history of agrarian reform struggle in Negros Occidental, the bedrock of feudalism in the country. All the odds were against the farmer beneficiaries, but they had two things many others did not have: the determination to win and the willingness to sacrifice.

These two heroic traits were further enhanced through the following factors in their struggle for land rights:

1. Legal and moral legitimacy

The farmer beneficiaries have undergone the standard process of identification and qualification in the selection of CARP beneficiaries. Cuenca and his followers repeatedly attempted to discredit the farmer beneficiaries but they could not overshadow the fact that DAR gave all camps the opportunity to apply as CARP beneficiaries during the selection process in 2000. The list of all the names of applicants were posted in public places, including the hacienda proper, so that those who seemed not qualified may be questioned and erased from the list.

As land title holders, the farmer beneficiaries have all the moral right to gain physical possession of their land—whether through formal installation by DAR or through self-installation in case the DAR refuses to install. It is their moral obligation to take control and cultivate the land that the State awarded to them to achieve equity and justice.

2. Openness and transparency

TFM's agenda to assist tillers in asserting their land rights has always been clear and untainted by any political or ideological aims. TFM welcomes all legitimate help without being bound to any tendencies. It works and takes up battles within established legal frameworks, relying on truthful information and facts.

In the struggle for land rights in Hacienda Velez Malaga, all groups and sectors were provided documents containing facts and figures of the case, statements of TFM positions, and updates of events, giving the stakeholders the assurance that they were extending help based on truth and legitimacy.

Openness and transparency were also critical in getting the confidence and trust of media people, who as a rule would want to maintain objectivity at all times but can be sympathetic to issues that are just and legitimate.

3. Broad solidarity

It would be difficult to conduct and win a struggle without the broadest support from different sectors. That support is only possible if a case is legitimate, and if it is easy to determine its legitimacy. It may be that the other side is also convinced of the legitimacy of its cause, but the truth of legitimacy will come out clear in the eyes of the broad sectors through incontrovertible facts.

4. Flexible and critical alliances

TFM does not fix a demarcation line between allies and enemies. In the case of DAR, it is both an ally and an enemy—an ally because it is the agency mandated to give land to the tillers, and an enemy because sometimes it fails to perform its social obligation.

Strategically, DAR must be assisted to achieve its mandate that is why it was important during the struggle to keep it as an ally against Cuenca. Simultaneously, social pressure must continue to push DAR to perform its task.