

BENJAMIN V. GUIANG AND NATIVIDAD H. GUIANG; AURELIO B. HIQUIANA AND PASTORA O. HIQUIANA, PETITIONERS, VS. FILOMENO C. KINTANAR AND CORAZON B. KINTANAR; CORA ANN B. KINTANAR, COR...

G.R. Nos. L-49634-36. July 25, 1981

Ponente: BARREDO, J.

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BARREDO, J.:

Petition filed on January 15, 1979 for certiorari and mandamus seeking the setting aside of the decision and the two orders subsequent thereto of respondent judge dated August 20, 1975 and November 14, 1978 and December 27, 1978, respectively, as acts committed in grave abuse of discretion, the compromise agreement on which said decision was based being allegedly in contravention of the Constitution and the Public Land Act, hence the execution thereof under the two questioned subsequent orders had no legal basis.

The exact nature of the petition and the relevant antecedents may perhaps be stated more comprehensively by quoting from the petition itself (omitting the annexes mentioned therein) the following:

"2.1. This is a petition for certiorari, assailing as grave abuse of discretion, tantamount to a jurisdictional error, the order of the respondent Judge in refusing to nullify a compromise agreement that violates the Public Land Act (Com. Act 141) and the 1973 Constitution, and in ordering the execution of judgment based thereon, rendered in three related cases between the petitioners and private respondents.

3.0 Antecedents

"3.1. On December 5, 1974, three related complaints, successively docketed were instituted before the CFI of Quezon City, as follows:

- a) Spouses Benjamin V. Guiang and Natividad Hiquiana-Guiang, Plaintiffs, vs. Filomeno C. Kintanar, defendant, Civil Case No. Q-19572;
- b) Spouses Benjamin V. Guiang and Natividad Hiquiana-Guiang, Plaintiffs, vs. Spouses Filomeno C. Kintanar and Corazon B. Kintanar; their children: Cora Ann, Cora Lou and Fil Roger, all surnamed Kintanar, defendants, Civil Case No. Q-19573;
- c) Spouses Aurelio and Pastora Hiquiana and spouses Benjamin and Natividad Guiang, Plaintiffs, vs. Filomeno C. Kintanar, Defendant, Civil Case No. Q-19574;

"In the first complaint (Civil Case No. Q-19572), plaintiffs sought certain sums of money and an accounting from defendant in his management of the former's 216 hectares of coconut lands in San Roque, Sta. Maria, Davao del Sur.

"In the second and third complaints (Civil Case Nos. Q-19573 and Q-19574), plaintiffs sought the rescission (with damages) of the sales of their lands in favor of defendants due to the failure of the latter to pay the

installments on the agreed price.

"These three complaints are reproduced together with attachments as Annexes 'A', 'B' and 'C' hereof.

"3. 2. On August 20, 1975, the parties in these three cases, consolidated in the sala of respondent Judge, jointly moved for a decision based on a 'Compromise Agreement' substantially stipulating as follows:

(a) The Guiangs and the Hiquianas, upon signing of the compromise shall execute a deed of absolute sale in favor of the Kintanars, covering two parcels of land (Lots B-3 and B-4) of OCT No. 12281, Register of Deeds of Davao, covering an area of 48 hectares.

(b) The Kintanars shall pay the Guiangs and the Hiquianas P100,000.00 within 90 days from the execution of the deed of absolute sale above mentioned and if the Kintanars fail to pay that sum within that 90-day period, they shall forfeit all their rights, interests and claims to Lots B-1 and B-2, OCT No. 12281, and Lot A-2 and A-3, OCT No. P-16465, Register of Deeds of Davao.

(c) Upon payment by the Kintanars of P100,000.00, the Guiangs and the Hiquianas shall execute a deed of absolute sale over Lots Nos. B-1 and B-2, OCT No. 12281, consisting of 48 hectares, and over Lots A-2 and A-3, OCT No. 16465, consisting of 50 hectares.

(d) The Kintanars shall pay the Guiangs and the Hiquianas P70,000.00 within 60 days from date of the execution of the deed of absolute sale mentioned in the immediately preceding paragraph, and the sum of P50,000.00 within 30 days from the payment of P70,000.00. If the Kintanars do not pay both amounts in their respective due dates, the Kintanars forfeit all their rights, interests and claims over Lots B-1 and B-2, OCT No. 12281 and Lot A-2, OCT P-16465, and shall reconvey the three parcels so forfeited.

(e) The Kintanars agree to annotate at the back of the titles covering Lots B-1 and B-2 and Lots A-2 and A-3, this compromise agreement as a lien or encumbrance.

"(f) The Agreement shall supersede all other agreements, contracts to sell and other documents pertaining to the lots in question.

"3.3. On the same day, the respondent Judge promulgated a brief decision approving the compromise agreement which was made an integral part thereof. The covering decision is attached as Annex 'D', while the joint motion for decision based on compromise agree-ment is attached as Annex 'E' hereof.

"3.4. Sometime on August 17, 1978, private respondents (defendants Kintanars below) filed a petition (Annex 'F') for execution of the judgment by compromise at the same time praying that petitioners be declared in contempt of court. Alleging payment to petitioners (the Guiangs and Hiquianas) of the total sum of P240,000.00 pursuant to the compromise agreement, respondents complained about the failure of the petitioners to execute in their favor, the deeds of conveyance to Lots Nos. B-1 and B-2 of OCT 12281 and Lots Nos. A-2 and A-3 of OCT No. 16465, Register of Deeds of Davao.

"3.5. On September 25, 1978, petitioners opposed respondents' petition for contempt and execution and filed a detailed and lengthy opposition (Annex 'G'), embodying a counter-motion 'To Declare the Compromise Agreement Void as to Sale'. In essence, petitioners contend that the compromise decreed the sale to the Kintanars of six lots with a combined area of 146 hectares originally covered by sales patents acquired through purchase by petitioners from the government, consequently violating the maximum limit of 24 hectares that an individual may acquire by purchase under Section 11 of Article XIV of the 1973 Constitution, taken in relation to the Public Land Act (Com. Act 141). At the time of the execution of the compromise agreement, petitioners were not aware that private respondents were already holders of 29 hectares of public land acquired before the effectivity of the new Constitution in 1973. At any rate, the total area that the compromise agreement ceded in favor of respondents were grossly excessive of the legal limits above mentioned. If construed as a sale, the

compromise was a nullity, but taken as a lease, since private respondents had already taken possession of the lands and benefitted immensely from their produce, the compromise was perfectly valid and legal because the 1973 Constitution allows an individual to lease 500 hectares of alienable public lands. Viewing the compromise as a lease would make the amounts paid by respondents to petitioners, rentals or reasonable damages for the use and occupancy of the lands.

"At the same time, petitioners sought for a post-judgment hearing to ventilate factual issues arising from their opposition and counter-motion.

"3.6. On November 14, 1978, the respondent Judge issued an order (Annex 'H'): (a) denying the petitioners' counter-motion to declare the compromise agreement void as to sale; (b) ordered the issuance of a writ of execution and (c) denying respondents' petition for contempt.

"3.7. On November 24, 1978, petitioners filed a Motion for Reconsideration (attached as Annex 'I') of the Order of November 14, 1978, insofar as that portion where the respondent Judge refused to nullify the compromise agreement as a sale.

"3.8. During the hearing of this motion on December 5, 1978, the parties agreed to submit a supplemental memorandum of authorities to buttress their respective positions. On December 20, 1978, petitioners submitted their memorandum of authorities which is attached hereto as Annex 'J'.

"3.9. Respondents did not submit any memorandum, or in any event, petitioners did not receive a copy of such memorandum. On December 27, 1978, respondent Judge denied for lack of merit, petitioners' Motion for Reconsideration. (Annex 'K')." (Pp. 2-6, Petition, pp. 5-9, Record.)

On February 2, 1979, We required respondents to comment on the petition, issuing at the same time a restraining order against the implementation of the impugned order of execution. Although filed ten (10) days beyond the period given by the Court, We nevertheless accepted respondents' comment, considering that the main issue raised by petitioners is a novel one, in the sense that it is predicated on the theory that a judgment by compromise, which becomes final and executory upon approval by the court, may still be set aside, three (3) years later and after it had been partially complied with by both parties, upon the ground that the agreement, it is contended, violates the Constitution and the Public Land Act, hence contrary to public policy of the Philippines. Petitioners maintain the affirmative, contending that when the purpose of setting aside a judicial compromise is to pursue and implement a fundamental state policy embodied in no less than the Constitution, the ordinary remedies for relief and periods therefor do not apply.

On the other hand, private respondents posit in their belated comment that:

"Private Respondents, by counsel, respectfully submit the following comment:

1.0 On the Petition

1.1. In line with the decision of this court in the case of ROMULA MABALE, et al., Petitioners vs. Hon. SIMPLICIO M. APALISOK, et al., Respondents, (G.R. No. L-46942, Feb. 6, 1979) petitioners should have seasonably moved for the setting aside of the compromise and the judgment based upon it. In that case this court said:

"To be entitled to appeal from judgment approving a compromise, a party must move not only to set aside the judgment, but also to annul or set (aside) the compromise itself on the ground of fraud, mistake or duress vitiating his consent to the compromise to set it aside under Rule 38 of the Rules of Court, the petition for relief must be filed within six months from the date judgment was entered . . . ' (supra)

1.2. The judgment based on compromise in these three cases was entered on 20 August 1975, on the same date

that the compromise agreement was signed and submitted, so that petitioners should be presumed to have knowledge about it on said date also. Petitioners had, therefore, up to 20 February 1976 within which to file their petition for relief.

1.3. On 22 September 1975, or just about 32 days after the judgment on compromise was entered, petitioner Guiang wrote a 'four page letter' to the Land Registration Commissioner, already questioning the legality of the sales under the compromise agreement on exactly the rationale he advances now.

1.4. The Commissioner of LRC replied to petitioner Guiang on 29 September 1975 (seven days later) confirming and agreeing in so many words with the latter's belief that Section 122 of CA 141 was being violated by the implementation of the compromise agreement.

"1.5. From the foregoing, it is clear that petitioners had more than ample time within which to seek relief from the lower court's judgment on compromise. They deliberately neglected to do this. Instead, leading the private respondents on to complying with the compromise, petitioners received the payments of the private respondents in the following amounts:

P 100,000.00 on 19 November 1975

70,000.00 on 23 March 1976

50,000.00 on 21 April 1976

1.6. Petitioner Guiang, having thus acquired the wherewithal, thereafter traveled extensively abroad, returning home sometime in September or October of 1977. In any case, upon his arrival, he wrote respondent Atty. Filomeno Kintanar a letter dated October 9, 1977 informing the latter that he, petitioner Guiang, and his family will never sign the deeds of sale for the remaining lots (B-1, B-2, A-2 and A-3); that the transfer of lots B-3 and B-4 were void, and inferentially threatening Kintanar with criminal prosecution for a statement in an affidavit accompanying the transfer of Lots B-3 and B-4. Atty. Guiang further demanded the return of Lots B-3 and B-4 without offering to return one centavo of the payments he received.

1.7. Even then the petitioners raised the question of legality of the compromise agreement and the judgment in earnest only when the private respondents were constrained to move for court intervention by way of an order of execution on 18 August 1978.

1.8. What all the foregoing citation of events lead to is that under the doctrine laid down in the case aforesaid, petitioners have by their studied neglect, foreclosed entitlement to appeal by certiorari, there having been all along 'plain, speedy and adequate remedy in the ordinary course of law' (Sec. 1 Rule 65, Rules of Court)." (Pp. 169-171, Record.)

As background for the resolution of the above conflicting claims of the parties. We may quote hereunder from the petition what appear to be the specific relevant facts bearing on the question of whether or not there is indeed any public policy violated in the compromise agreement in issue as would justify its nullification and setting aside, notwithstanding the time that has elapsed before the supposed unconstitutionality thereof was raised, particularly in the light of Section 3 of Rule 38 of the Rules of Court on Petitions for Relief, which fixes the period for possible setting aside of a judgment at only sixty (60) days from the time the party concerned learns of the judgment and not later than six months or 180 days after it has become final and executory, and besides, the fact that said judicial compromise had already been partially complied with by the parties, petitioners having actually executed and delivered to respondents the corresponding deeds of sale covering two of the contested lots (Lots B-3 and B-4 covered by OCT 12881), such that what is pending only for the complete consummation of the agreement is the execution by petitioners, the Guiangs and Hiquianas, of the deeds of sale over four more lots covered by said agreement. According to the petition (omitting the attachments mentioned therein), and there is

no serious denial thereof in private respondents' comments:

"Pertinent Factual Milieu Re-Stated

(a) History of Petitioner's Lands -

1. The six parcels of land totalling 146 hectares were originally part of the public domain. They were leased by the Philippine Government in favor of Gaudencio C. Hiquiana, deceased predecessor in interest of the petitioners. The lease was covered by Lease Application No. 2439 (E-244), covering about 350 hectares of land situated in Davao del Sur, for 25 years pursuant to Act 2874.

2. Upon the death of Gaudencio C. Hiquiana, his wife, Pascuala Vda. de Hiquiana, obtained an approval for the renewal of the lease. A certified copy of the lease issued by then Director Jose P. Dans of the Bureau of Lands was among the attachments in petitioners' Counter-Motion (Annex 'G') in the court below.

3. Pascuala Vda. de Hiquiana her land surveyed and subdivided into four lots, to wit: Lots A, B, C and D, with the corresponding sub-division plan Psd-34219 approved by the Director of Lands on February 21, 1952.

4. Later, the widow and her children filed sales applications with the Bureau of Lands to purchase these subdivided lots: (a) the sales application of the widow for Lot C was recorded as No. V-15066; (b) the sales application by Natividad Hiquiana Guiang for Lot B was recorded as No. V-15067; (c) Aurelio Hiquiana for Lot A, as Application No. 26001; and (d) Julia Hiquiana for Lot D.

"5. On April 29, 1959, Sales Patent No. 2521 was issued to Natividad Hiquiana Guiang for an area of 110 hectares, 4 acres and 14 centares, embraced by Original Certificate of Title No. P-12281 dated June 12, 1959. This torrens title was among the attachments of petitioners' counter-motion (Annex 'G').

6. On March 10, 1966, Sales Patent No. 3180 was issued to Aurelio V. Hiquiana, covered by Original Certificate of Title No. P-16465 dated April 22, 1964.

7. Natividad H. Guiang subsequently subdivided her Lot B into five (5) lots, which came to be known as Lots B-1, B-2, B-3 and B-4, all with 24 hectares each, or a total of 96 hectares, and Lot B-5, with an area of 14.0413, or a grand total of 110.0413 hectares.

8. Aurelio V. Hiquiana, who got Lot A, also subdivided the same lot into three (3) lots, which came to be known as Lots A-1 (60.6182 hectares), Lot A-2 (25 hectares) and Lot A-3 (25 hectares) making a grand total of 110.6182 hectares covered by Subdivision Plan Psd-13824.

9. The six lots covered by the compromise agreement between the parties refer to the 4 out of the 5 lots into which original Lot B was sub-divided by Natividad Hiquiana Guiang, and 2 out of the 3 lots of the original Lot A subdivided by Aurelio Hiquiana. The first four lots have an area of 96 hectares (24 hectares each) while the two lots have an aggregate area of 50 hectares (25 hectares each). Thus the total area of the 6 lots subject of the compromise agreement was 146 hectares of originally public lands.

(b) Actions Taken by Petitioners -

In conformity with the Compromise Agreement, the petitioners immediately executed a deed of sale over Lots B-3 and B-4, in favor of the private respondents (see attachment A of Annex 'G'). Notwithstanding completion of the staggered payments for the other lots, petitioners could not bring themselves to execute the deeds for their conveyance because by then, they were seized by serious misgivings concerning the legality of the compromise agreement.

"What triggered the quest for legal opinions by the petitioners, was the discovery that at the time of the compromise agreement, private respondents did not disclose that they had already acquired 29 hectares of alienable public lands.

On September 22, 1975, a four-page letter was addressed by petitioner Guiang to the Land Registration Commissioner (see attachment F of Annex 'G') concerning the legality of a transfer of lands originally acquired through sales patent, in excess of the maximum of 24 hectares imposed by the New Constitution. In reply, the Commissioner of the Land Registration Commission stated that the document of transfer was already an accomplished fact and bears the imprimatur of the Court, and that since private respondents (the Kintanars) had executed an affidavit--which incidentally was false and which became the basis of a criminal charge for perjury before the Fiscal's Office of Davao del Sur--the Commissioner was constrained to give due course to the registration of the sale (Attachment A of Annex 'G').

On October 9, 1977, petitioner Guiang wrote a letter to respondent Kintanar (see Attachment H of Annex 'G') explaining his reasons why he could not execute a deed of conveyance of the remaining four lots subject of the compromise agreement. Petitioner proposed reconveyance and certain repayments in lieu of the compromise agreement to avoid the harmful effects of escheat. But Kintanar ignored the deadline set by Guiang for acceptance of the counterproposals.

To pressure Kintanar, Guiang filed a criminal case for forgery and violation of the Constitution before the Fiscal's Office of Davao del Sur. Unfortunately, the Fiscal dismissed the charge on the ground that the lands so transferred were already private agricultural lands, and there is no limit under the law for the acquisition by purchase of these lands. (See other attachment of Annex 'G').

On July 12, 1978, the Legal Division of the Bureau of Lands, replying to petitioner Guiang, gave the following pertinent opinions:

- a. 'x x x After a public land has been titled under the provisions of the Public Land Act (Commonwealth Act No. 141, as amended, the same, for all legal intents and purposes, becomes a private agricultural land subject, however, to the restrictions contained in Section 29, 118, 119, 121 and 122 of the said Act.'
- b. 'x x x Simply stated, an individual cannot acquire either by sale, transfer, assignment or lease, lands originally acquired under the free patent, homestead, or individual sale provisions of Commonwealth Act No. 141 if the total area of such acquisition added to his present landholdings exceeds one hundred forty-four hectares. x x x.'
- c. 'x x x It must follow as a matter of course that since January 17, 1973 when the New Constitution went into force, the maximum area of patented or titled land that an individual can acquire is only such as will not exceed twenty-four (24) hectares including his present landholdings. With these premises, it is our considered opinion that the maximum area that an individual could acquire under Article 122 of Commonwealth Act No. 141, as amended, has been amended or reduced to 24 hectares as provided for under Section 11, Article XIV, of the 1973 Constitution.'

(This letter is embodied in Attachments K and K-1 to Annex 'G').

Again, on September 20, 1978, the Director of Lands wrote petitioner Guiang, expressing the opinion that husband and wife are considered as one person for purposes of implementing Sec. 122 of C.A. 141, and the maximum area of 144 hectares which can be acquired by an individual under the same provision of the Public Land Act, has been reduced to only 24 hectares by virtue of the New Constitution. The letter of Director Casanova appears as Attachment H to Annex 'G' of this Petition." (Pp. 10-14 of Petition)

In the light of the foregoing premises, the legal and constitutional issues We have to resolve are the following:

1. Does Section II, Article XIV of the 1973 Constitution of the Philippines, reading:

"Sec. 11. The National Assembly, taking into account conservation, ecological, and developmental requirements of the natural resources, shall determine by law the size of lands of the public domain which may be developed, held or acquired by, or leased to, any qualified individual, corporation, or association, and the

conditions therefor. No Private corporation or association may hold alienable lands of the public domain except by lease not to exceed one thousand hectares in area; nor may any citizen hold such lands by lease in excess of five hundred hectares or acquire by purchase or homestead in excess of twenty-four hectares. No private corporation or association may hold by lease, concession, license, or permit, timber or forest lands and other timber or forest resources in excess of one hundred thousand hectares; however, such area may be increased by the National Assembly upon recommendation of the National Economic and Development Authority."

constitute an amendment of Section 122 of Commonwealth Act 141, the Public Land Act providing that:

"Except in cases of hereditary succession, no land or any portion hereof originally acquired under the free patent, homestead, or individual sale provisions of this Act, or any permanent improvement thereon be leased to such individual, when the area of such land, added to that of his own, shall exceed one hundred and forty-four hectares, any transfer, assignment, or lease made in violation hereof shall be null and void."

in the sense that after the Constitution took effect on January 17, 1973, any transfer or assignment of lands, already validly in the hands of private individuals and having areas allowed by said provision, (not in excess of 144 hectares) but acquired by them under free patent, homestead, or individual sale provisions of the Act, the area that may be transferred or assigned such holder to another person can no longer exceed twenty-four (24) hectares?

2. Assuming the affirmative of the foregoing proposition, but considering, on the other hand, that the parties had entered into the agreement in good faith as the means of settling amicably the three juridical suits (enumerated in the petition) among them, and that the approval of the court thereof had under the rules already long become final, as in fact, it had already been partially executed in 1975, is it still legally possible to have the same declared a nullity and be set aside as prayed for in an opposition filed in 1978 to a motion for its execution?

3. It is a conceded fact that when they entered into the compromise agreement in dispute, private respondents, the Kintanar spouses, were already the owners and had already the title in their names of a lot of 29 hectares acquired under the Public Land Act; now, what is the effect of such fact upon the validity of the compromise agreement, considering the prohibition contained in the same Section 122 against transfer or assignment to persons already owning areas of lands, which if added to what is to be transferred or assigned to them would exceed the limit provided therein?

I

After mature deliberation and consideration of pertinent principles of statutory and constitutional construction together with what appears to be the obvious intent and objective of the legal and constitutional provisions relevant to the above issue, We encounter no difficulty at all in holding that, as contended by petitioners, Section 122 of the Public Land Act has been amended by no less than Section 11, Article XIV of the 1973 Constitution of the Philippines by reducing correspondingly the areas of the disposable public lands mentioned therein.

In their comment as well as in their memorandum, however, private respondent insists (1) that there is no "causative link", as they put it, between the limitation of areas in the Constitution and the limitation of areas in the Public Land Act. They argue that whereas under the 1935 Constitution, the pertinent provision was that:

"Sec. 2. No private corporation or association may acquire, lease or hold public agricultural lands in excess of one thousand and twenty four hectares, nor may an individual acquire such lands by purchase in excess of one hundred and forty four hectares or by lease in excess of one thousand and twenty four hectares or by homestead in excess of twenty four hectares...." (Sec. 2, Article XIII of the 1935 Constitution)

the limit to leasable lands was 1,024 hectares, Section 122 of the Public Land Act set the limit to only 144

hectares and (2) that the limitation of purchasable areas under the Act is also 144 hectares was a mere unintended coincidence.

Clearly, such contention suffers from the flaw known in logic as non-sequitur. There was nothing wrong for the legislature to provide for a limitation, as to leasable lands, less than that fixed in the Constitution. In fact, the cited constitutional provision itself opens with the statement that "(t)he National Assembly, taking into account conservation, ecological, and developmental requirements of the natural resources, shall determine by law the size of lands of the public domain which may be developed, held or acquired by, or leased to, any qualified individual, corporation, or association, and the conditions therefor." The so-called "causative link" would indeed not have existed, had the Congress exceeded what the Charter allowed.

The argument about unintended "coincidence" in the limit of purchasable areas is too speculative, even puerile, to require any refutation. What to Us is clear and obvious is that when the Constitution fixes a limit of the area of public lands that can be "acquired" by purchase by an individual, it follows as a matter of logic that such is also the maximum area of land originating from the public domain that can be transferred to him. True, lands once acquired from the government under the Act do become private property, as private respondent argues, but for reasons of public policy and interest implicit in Section 122 itself, such private ownership is subject to the limitations stated therein. Proof of the strictness of the policy is that the prohibition or injunction is automatically embodied in the Torrens Title issued to the purchaser. All such titles pertinently read in part thus:

"ORIGINAL CERTIFICATE OF TITLE

"TO HAVE AND TO HOLD the said tract of land, with the appurtenances thereunto of right belonging unto the said _____ and to his heir and heirs and assigns forever, subject to the provisions of Sections 121, 122 and 124 of Commonwealth Act No. 141 as amended. (Underlinings supplied for emphasis)

"TRANSFER CERTIFICATE OF TITLE

"IT IS HEREBY CERTIFIED that certain land situated in the _____, more particularly bounded and described as follows:

is registered in accordance with the provisions of Section 122 of the Land Registration Act in the name of:

subject to the provisions of the said Land Registration Act and the Public Land Act, as well as to those of the Mining Laws, if the land is mineral, and subject further to such conditions contained in the original title and may be subsisting. (Underlinings supplied for emphasis)" (Pp. 277-278, Record.)

It is Our considered opinion, and We so hold, consistently with the view of the Legal Division of the Bureau of Lands cited by petitioners in their petition (p. 14) that after the ratification of the Philippine Constitution of 1973 on January 17, 1973, the maximum area of land acquired from the disposable public domain that can be transferred or assigned to another party by the original patentee, purchaser or homesteader became 24 hectares (instead of the 144 hectares under the 1935 Constitution), thereby reducing correspondingly the 144-hectare limitation set in Section 122 to only 24 hectares. We hereby adopt as Our own the subsequent opinion of the Director of Lands quoted not only in the petition, as already stated, but also in petitioners' "Motion Ex-Parte for Earliest Decision of the Above-Entitled Case" dated October 7, 1980:

"The first query is whether public lands which have already been titled or patented under the homestead sales or individual sale or free patent provision of Public Land Act are to be considered 'private agricultural lands.' After a public land has been titled under the provisions of the Public Land Act (Commonwealth Act No. 141, as amended) the same for all legal intents and purposes, becomes a private agricultural land subject, however, to the restrictions contained in Section 29, 118, 119, 121 and 122 of the said Act.

"Your second query states whether Article 122 of Commonwealth Act No. 141 as amended covers a situation wherein parcels of public lands acquired by an individual, which after collation exceed 144 hectares which have already long been patented under homestead, individual sale or free patent provisions thereof could be owned or possessed by him legally. Our reply to the above is in the affirmative. The pertinent provision of Section 122 of the Public Land Act provides:

'Except in cases of hereditary succession, no land or any portion thereof originally acquired under the free patent, homestead, or individual sale provisions of this act, or any permanent improvement on such land shall be transferred or assigned to any individual, nor shall such land or any permanent improvement thereon be leased to such individual, when the area of said land, added to that of his own, shall exceed one hundred and forty-four hectares. Any transfer, assignment or lease in violation hereof shall be null and void.'

"The aforequoted provision constitutes one limitation on the transfer or lease of lands titled under the provisions of the Public Land Act. Simply stated, an individual cannot acquire either by sale, transfer, assignment or lease, lands originally acquired under the free patent, homestead, or individual sale provisions of Commonwealth Act No. 141 if the total area of such acquisition added to his present landholdings exceed one hundred forty-four hectares. To construe the provision otherwise would render nugatory the rationale or philosophy which underlined such a restriction which is to prevent the concentration of large tracts of lands in the hands of a single individual. There is only one recognized exception to this and that is when the transfer or assignment is by means of hereditary succession in which event the area limitation contained in Section 122 will not apply.

"As regards your third question on whether the maximum area that an individual could acquire under Section 122 of Commonwealth Act No. 141, as amended has been amended from 144 to 24 hectares, our reply thereto is in the affirmative.

"It will be stated as a preliminary premise that the basis of the 144 hectare limit provided for in Section 122 of the Public Land Act is the area stated in Section 22 of the same Act which is also one hundred forty-four hectares. The area limits set forth in these two sections of the act are based on the constitutional limit contained in the 1935 Philippine Constitution. Since the New (1973) Constitution in its Section 4, Article XIV has chosen to reduce the original area that an individual can purchase from one hundred forty-four (144) to twenty four (24) hectares, it must follow as a matter of course that since January 17, 1973, when the New Constitution went into full force, the maximum area of patented or titled land that an individual can acquire is only such as will not exceed twenty-four (24) hectares including his present landholdings. With these premises, it is our considered opinion that the maximum area that an individual could acquire under Article 122 of Commonwealth Act No. 141, as amended, has been amended or reduced to 24 hectares as provided for under Section 11, Article XIV of the 1973 Constitution." (Annex K of Annex G of the petition.)

II

Having the foregoing conclusion in view, may the judicial compromise in question in the instant cases be declared null and void or at least reduced as to the area therein referred to to only 24 hectares, considering the peculiar factual milieu extant in the record?

This question is not as simple as it seems. It involves both adjective and substantive points that have to be carefully weighed and scrutinized in order to arrive at a legal and just conclusion.

- A -

With respect to its remedial or procedural law aspect, it is beyond dispute that the order approving the compromise agreement of the parties herein became immediately final and executory upon its promulgation on

August 20, 1975, so much so that deeds of sale covering two lots (Lots B-3 and B-4 of OCT No. 12281 of the Registry of Deeds of Davao) were executed and delivered by the Guiangs to private respondents the next day, August 21, 1975. Neither a motion for reconsideration of said order nor a petition for relief therefrom was filed within their respective due periods fixed by the Rules. According to the petition itself, on the dates agreed upon, private respondents paid petitioners as each installment fell due, the total sum of P240,000.00. (This figure is not admitted by private respondents.)

It was only on August 17, 1978 that, as far as the trial court was concerned, the rumblings of a grave controversy between the parties began to be heard, for on said date, private respondents filed with said court, the following:

"PETITION TO DECLARE PARTY IN CONTEMPT AND FOR EXECUTION

DEFENDANTS, by undersigned counsel, respectfully allege:

1. That the parties hereto entered into a compromise agreement entitled 'JOINT MOTION FOR A DECISION BASED ON A COMPROMISE' on August 20, 1975, which was approved and made the basis for a decision of the court terminating these cases.

2. That in compliance with their undertakings delineated in paragraphs 2 and 4 of aforecited compromise agreement, defendants have faithfully paid the plaintiffs the total amount of Two Hundred and Forty Thousand Pesos (P240,000.00) well within the agreed limiting dates, which payments represented full and complete satisfaction of the amounts due the plaintiffs under the agreement.

3. That despite compliance by the defendants of their part of the agreement, plaintiffs have failed, and despite repeated demands, have refused and up to this date continue to fail and refuse to execute the deeds of conveyance to Lots Nos. B-1 and B-2 of O.C.T. No. 12281 and Lots Nos. A-2 and A-3 of O.C.T. No. 16465, which actions they promised and undertook to do under paragraph 3 of the com-promise agreement.

4. That the payments made by the defendant to plaintiffs were duly and timely reported to this Honorable Court.

5. That the approval of the Court of the compromise agreement had the effect of converting the actions agreed upon therein into specific orders of the court that they be so executed.

"6. That under Sec. 10 of the rules, the plaintiffs having refused to comply with the order of the court, the court may direct either that the conveyance be done by some other person at the cost of the disobedient party or enter judgment divesting title from the plaintiffs and vesting same with the defendants.

WHEREFORE, it is most respectfully prayed that:

1. Plaintiffs after being afforded a chance to be heard by himself or counsel be declared in contempt of this Honorable Court, imposing upon said defendant such penalty as this court may deem just and proper.

2. That plaintiffs be divested of title to Lots Nos. B-1 and B-2 and Lots Nos. A-2 and A-3, vesting said titles with defendants as follows:

B-1 to CORA-ANN B. KINTANAR

B-2 to CORA-LOU B. KINTANAR

A-2 to FILOMENO C. KINTANAR

A-3 to FIL-ROGER B. KINTANAR

Quezon City, 17 August 1978.

(Sgd.) PATERNO P. TRINIDAD

Counsel for the Defendants

64 12th Ave., Cubao, Q. C."

(Annex F, pp. 62-64, Record.)

To this petition, petitioners filed an 18-page opposition which, at the cost of extending this opinion, We will quote, for the sake of a deeper insight into the respective positions of the parties vis-a-vis the issues We are resolving:

"OPPOSITION

(To Defendants' Petition To Declare

Party In Contempt And For Execution)

WITH MOTION TO DECLARE COMPROMISE

AGREEMENT VOID AS TO SALE

"COME NOW plaintiffs in the three (3) above-captioned civil cases, thru their undersigned counsels, and answering defendants' PETITION TO DECLARE PARTY IN CONTEMPT AND FOR EXECUTION dated 17 August 1978, most respectfully interpose the instant Opposition DENYING or ADMITTING the material allegations thereof as follows:

I

"Plaintiffs ADMIT the allegations found in paragraphs 1 and 2 of the petition regarding the fact of presentation by the parties hereto of a so-called Compromise Agreement between the parties hereto and its subsequent approval by this Honorable Court and also in so far as the same alleges payment to plaintiffs by defendant-vendees Filomeno C. Kintanar and Corazon B. Kintanar of the amounts provided therein. Plaintiffs, however, DENY, for reasons found elsewhere in this pleading, the rest of the allegations thereof insofar as they impute upon plaintiffs the obligation to execute a deed of conveyance over the six (6) parcels of land subject matter of the three (3) above-entitled cases, or insofar as they insinuate that such payments represent consideration for the sale of such land. The reason for this is plain—that any such sale would be prohibited under the provisions of Commonwealth Act No. 141, known otherwise as the Public Land Act, in correlation with the 1973 Constitution, which prohibit the acquisition by any citizen of the Philippines of any lands of the public domain in excess of twenty four (24) hectares.

II

"Plaintiffs DENY paragraph 3 of the petition of defendants insofar as the same allege 'compliance' only on the part of defendants of their alleged obligations under the so-called Compromise Agreement and failure and refusal on the part of plaintiffs to execute certain 'actions they promised and undertook to do' as indicating a lack of candor if not a gross misrepresentation of facts before this Honorable Court. The fact is that as early as August 21, 1975, or the day following the August 20, 1975 date of the Compromise Agreement and Decision of this Court approving the same, plaintiffs-spouses Benjamin V. Guiang and Natividad H. Guiang, in compliance with and obedience to such Decision, immediately executed a Deed of Absolute Sale in favor of defendants-spouses Filomeno C. Kintanar and Corazon B. Kintanar over Lots 'B-3' and 'B-4' (covered by Sales Patent No. 2521 and Original Certificate of Title No. 12281 of the Register of Deeds of Davao in the name of plaintiffs-spouses Benajmin V. Guiang and Natividad H. Guiang), with the result that the latter-mentioned

office caused cancellation of the certificate /s of title in the names of said plaintiff-spouses and entered two (2) new certificates of title in the names of defendant-spouses.

"Xerox copy of the Deed of Absolute Sale of plaintiffs-spouses as vendors dated August 21, 1975 which also bear the signature of defendant Filomeno C. Kintanar as Vendee is hereto attached, marked Annex 'A', and made an integral part of this Opposition.

"Much as it is plaintiffs' sincere desire to comply with the remainder of what is incumbent upon them as provided in the aforementioned Compromise Agreement, the same cannot, however, be done with impunity since, as will be fully discussed elsewhere in this pleading, such an act is prohibited by the law and the Constitution and therefore legally impossible of accomplishment.

III

"Plaintiffs DENY the allegations of paragraph 4 of the petition for lack of knowledge sufficient to form a belief as to the truth thereof at the time of preparation of this pleading.

IV

"Plaintiffs CONCEDE in principle the legal conclusion expressed in paragraph 5 of the petition but DENY its applicability to the cases at bar for reasons already outlined elsewhere in this pleading.

V

"Plaintiffs hypothetically ADMIT the legal conclusion expressed in paragraph 6 of the petition, but DENY such allegations therein insofar as they insinuate plaintiffs contumaciously refused to comply with 'the order of the Court'. As plaintiffs shall endeavor to explain herein, ever since their execution of the Deed of Sale, Annex 'A', plaintiffs have been actually taking tedious, painful and time-consuming efforts and steps if only to determine once and for all whether they are really bound to execute the deeds and acts provided for in the Compromise Agreement. As things have turned out, plaintiffs have now become more than ever convinced that such acts as are proposed by defendants-spouses run counter to public policy, thus prompting plaintiffs to exercise restraint in the matter. If this be interpreted as a refusal to comply with the remainder of what is allegedly incumbent upon them, such refusal is, however, justified, for to direct plaintiffs to do otherwise would be to command them to violate the fundamental law of the land, something that neither the plaintiffs nor this Court cannot be privy to.

FACTUAL BACKGROUND OF THE 6 LOTS

SUBJECT - MATTER OF THE COMPROMISE

AGREEMENT

"For the purposes of obtaining a fuller and more comprehensive understanding of the plaintiffs' stand as outlined in the pleading at bar, plaintiffs have deemed it essential and relevant to trace and bring forth to the attention of the Honorable Court the origins of the six (6) lots subject-matter of the compromise agreement presented in the three (3) above-captioned civil cases.

"The said six (6) lots originally formed part of that larger parcel of land which became the subject-matter of an earlier contract of lease executed and granted by the Government of the Philippine Islands as Lessor, in favor of GAUDENCIO C. HIQUIANA (now deceased), as Lessee, under Lease Application No. 2439 (E-244), covering a parcel of land situated in Malita (now Sta. Maria) Davao del Sur, with an area of 350.6569 hectares for a period of 25 years from January 21, 1927 (or until January 20, 1952) under the provisions of Act No.

2874.

"After the Lessee died sometime in the year 1942, and upon petition of PASCUALA V. VDA. DE HIQUIANA as surviving wife of GAUDENCIO C. HIQUIANA, the contract of lease affecting said 350-hectare parcel of land was extended by means of an Order of Reconstitution and Renewal of Lease Contract dated February 21, 1950 for another period of 25 years from and including January 20, 1952, said application and extension granted being recorded under the name of PASCUALA V. VDA. DE HIQUIANA as Lessee. Certified copy of the aforementioned Order of Reconstitution and Renewal of Lease Contract issued by then Director of Lands Jose P. Dans is hereto attached, marked Annex 'B', and made an integral part of this pleading.

"By authority of the Office of the Bureau of Lands secured, and as per Lessee's request, the area covered under the above-mentioned lease application was subdivided into four (4) lots, known as Lots 'A', 'B', 'C' and 'D', with the corresponding subdivision plan prepared, identified as Psd-34219, approved by the Director of Lands on February 21, 1952.

"On January 26, 1951, the Lessee requested the segregation of Lots 'A', 'B' and 'D' of said subdivision plan Psd-34219 requesting that she (Lessee) be allowed to purchase Lot 'C' thereof, that her daughter NATIVIDAD H. GUIANG be allowed to purchase Lot 'B', that her son AURELIO HIQUIANA be allowed to purchase Lot 'A' and that Lot 'D' be allocated to JULIA HIQUIANA.

"After due investigation conducted by the Bureau of Lands, on March 31, 1953 the Sales Application of PASCUALA V. VDA. DE HIQUIANA for Lot 'C' of the 350-hectare land covered under Psd-34219 was accepted and recorded as Sales Application No. V-15066. The Sales Application filed by NATIVIDAD H. GUIANG for Lot 'B' was likewise accepted and recorded as Sales Application No. V-15067. AURELIO V. HIQUIANA and JULIA HIQUIANA were likewise given opportunity to file their corresponding Sales Application cover-ing Lots 'A' and 'D', respectively.

"All the foregoing appear in an Order issued by then Director of Lands Zoilo Castrillo dated March 31, 1953, certified copy of which is hereto attached, marked Annex 'C', and made an integral part of this pleading.

"Subsequently, and pursuant to such Order, AURELIO V. HIQUIANA duly filed Sales Application on Lot 'A' corresponding to him, which became known and recorded as Sales Application No. 26001.

"On April 29, 1959, NATIVIDAD H. GUIANG was issued Sales Patent No. 2521 on her Sales Application No. V-15067 covering an area of 110 hectares 4 acres and 14 centares by authority of the President of the Philippines, pursuant to which Original Certificate of Title No. P-12281 dated June 12, 1959 was issued by the Register of Deeds for the Province of Davao. Xerox copy of said Certificate of Title is attached, marked Annex 'D', and made integral part of this Opposition with Motion.

"On March 10, 1964, AURELIO V. HIQUIANA was also issued Sales Patent No. 3180 on his Sales Application No. V-26001 by authority of the President of the Philippines, pursuant to which Original Certificate of Title No. P-16465 dated April 22, 1964 was issued by the Register of Deeds for the Province of Davao. Xerox copy of said certificate of title is hereto attached, marked Annex 'E' and made an integral part of this Opposition and Motion.

"NATIVIDAD H. GUIANG then duly requested for subdivision of her land Lot 'B' (Sales Patent No. 2521 and O. C. T. No. P-12281) into five (5) lots, which came to be known as Lots 'B-1', 'B-2', 'B-3' and 'B-4' with 24 hectares each, or an aggregate area of 96 hectares and Lot 'B-5' with an area of 14,0413 hectares, or a total area of 110.0413 hectares, under Subdivision Plan (LRC) Psd-137751, approved by the Commissioner of Land Registration on March 26, 1971.

"AURELIO V. HIQUIANA who was awarded Lot 'A' of Psd-34219 (Sales Patent No. 3180 and O.C.T. No. P-16465) also effected subdivision the same into three (3) lots, known respectively as Lots 'A-1' with an area

of 60.6182 hectares, Lot 'A-2' with an area of 25 hectares, and Lot 'A-3' with an area of 25 hectares, or a total area of 110.6182 hectares, covered under Subdivision Plan (LRC) Psd-138284 approved by the Commissioner of Land Registration on April 5, 1971.

"In fine, the four (4) lots (out of the 5 lots awarded to NATIVIDAD H. GUIANG under Sales Patent No. 2521) known as Lots 'B-1', 'B-2', 'B-3' and 'B-4' have areas of 24 hectares each, or an aggregate area of 96 hectares, while the two (2) lots involved in the cases at bar (out of the 3 lots awarded to AURELIO V. HIQUIANA under Sales Patent No. 3180) known as Lots 'A-2' and 'A-3' have areas of 25 hectares each, or an aggregate area of 50 hectares. The total area of the six (6) lots which have become subject-matter of the compromise agreement, the decision approving the same, and presently, plaintiffs' pleading at bar, is therefore 146 hectares of land originally of the public domain, or public agricultural lands, acquired by the afore-named plaintiffs by purchase from the Government of the Philippine Islands.

**COMPROMISE AGREEMENT VOID AND
PLAINTIFFS' EARNEST EFFORTS EXERTED
IN DETERMINING THEIR RIGHTS AND
OBLIGATIONS THEREUNDER CITED**

"Vis-a-vis the petition seeking to declare and hold plaintiffs liable for contempt of this Honorable Court, plaintiffs have deemed it wise to incorporate in this pleading a brief statement of the several tedious, time-consuming and earnest steps taken by them in sustained efforts to seek once and for all clarification of the law on the matter with the end in view of complying with whatever obligations they may have assumed under the compromise agreement, to wit:

"1. On September 22, 1975 and October 14, 1975, or around a month after plaintiffs-spouses signed the Deed of Absolute Sale, Annex 'A' of this pleading, the Guiang & Alejo Law Offices as counsel of plaintiffs in the above-entitled cases, having serious doubts as to the legality and propriety of the Deed of Sale, Annex 'A' of this pleading, became prompted to address two (2) letters to the Commissioner of Land Registration, Manila, therein making the following query:

'Whether your Davao Office can refuse to accept for registration a Deed of Sale which by express provision of the document will be violative of Section 122 as amended by Commonwealth Act 615 and further amended by section 11 of Article 14 of the new Constitution.'

Copy of said letter of query of plaintiffs' counsel is hereto attached, marked as Annexes 'F' and 'F-1', and made integral parts of this pleading.

"2. In a communication addressed to plaintiffs' counsel dated October 17, 1977, Commissioner Gregorio Bilog, Jr. of the Land Registration Commission, replying to the above-mentioned query, stated among other things, the following:

'The Register of Deeds should comply with the law. However, the matter of registration of the deed of sale in question which was executed in compliance with the decision of the Court of First Instance of Quezon City, including the issuance of the corresponding transfer certificates of title being a fait accompli, this Commission feels it not proper to render an opinion. Moreover, according to your earlier letter the deed of sale was registered 'upon presentation of an affidavit of ownership by Atty. Filomeno Kintanar that he and his wife are holders of land not more than that allowed by the Constitution' which gives the impression that the document is registrable.'

Copy of said reply letter of the LRC Commissioner is hereto attached, marked as Annex 'C', and made an

integral part of this pleading.

"3. On October 9, 1977, plaintiff Benjamin V. Guiang addressed a letter to defendant Filomeno C. Kintanar, received by the latter on October 11, 1977; wherein plaintiff endeavored to explain in detail the reasons why, despite earnest efforts exerted on his part with the end in view of implementing the Compromise Agreement and Decision of this Honorable Court aforementioned, plaintiffs could not bring themselves to sign the draft of a Deed of Sale presented by defendants to plaintiffs thru the latter's counsel over the remaining four (4) lots subject-matter of the cases at bar. In such letter, plaintiff instead proposed another amicable settlement more in accordance with the provisions of the law and the Constitution, therein giving defendants up to November 30, 1977 within which to signify their stand or otherwise express their views. Salient points taken up in said letter:

- (a) That the proposed Deed of Sale is not in accordance with the Compromise Agreement approved by the Court since the said Compromise Agreement has for its vendee for the remaining 4 lots the Spouses Filomeno C. Kintanar and Corazon B. Kintanar, whereas the proposed Deed of Sale has for its vendees Fil-Roger (over Lot 'B-2') Cora-Ann (over Lot 'A-2') and Cora Lou (over Lot 'A-3') all surnamed Kintanar;
- (b) That the proposed Deed of Sale, once signed by plaintiffs to convey Lot 'B-1' (containing 24 hectares) in favor of Corazon B. Kintanar, will constitute a direct violation or infringement of the 24-hectare maximum limit or area of public land that the law provides any citizen of the Philippines could acquire under the 1973 Constitution of the Philippines, considering that by the time of effectivity of said Constitution, Corazon B. Kintanar was the registered owner of 29.07751 hectares originally acquired by homestead under the Public Land Act;
- (c) That on account of the foregoing considerations, plaintiffs therefore proposed another amicable settlement of the case more in accord with the new Constitution and the law;
- (d) That defendant Filomeno C. Kintanar was requested to state his position on plaintiffs' said proposal by or on November 30, 1977, to avoid further Court or administrative actions.

Copies of the aforementioned letter of plaintiff dated October 9, 1977 and the proposed Deed of Absolute Sale are hereto attached, marked respectively as Annexes 'H' and 'H-1' and made integral parts of this pleading.

"4. Owing to failure on the part of defendant Filomeno C. Kintanar as addressee to issue any reply or statement to the proposals of plain-tiff Benjamin V. Guiang contained in his letter Annex 'H', the latter became constrained to file a criminal complaint with the Office of the Provincial Fiscal of Davao del Sur charging defendant Filomeno C. Kintanar as respondent with violation of the Constitution and the Revised Penal Code; copies of said complaint together with its supporting affidavits of complainant's witnesses are hereto attached, marked respectively as Annexes 'I', 'I-1', 'I-2' and 'I-3', and made integral parts of this pleading;

"5. On July 5, 1978, Special Counsel Pacifico A. Villaluz as Investigating Fiscal issued an Order summoning both complainant Benjamin V. Guiang and respondent Filomeno C. Kintanar to appear at his office at Digos, Davao del Sur, on August 3, 1978, at 3:00 p.m., for clarificatory questions on the facts and circumstances of the above-mentioned criminal complaint in relation to Section 122 of Commonwealth Act 141; copy of the aforesaid Order of Special Counsel Villaluz is hereto attached, marked as Annex 'J', and made integral part of this Opposition;

"6. On July 12, 1978, the Legal Division, Bureau of Lands, in response to a letter containing a legal query posed by plaintiff Benjamin V. Guiang, issued an opinion on the following points by means of the instant pleading presented before this Honorable Court, pertinent portions quoted for purposes of emphasis as follows:

- a. 'x x x After a public land has been titled under the provisions of the Public Land Act (Commonwealth Act No. 141, as amended, the same, for all legal intents and purposes, becomes a private agricultural land subject, however, to the restrictions contained in Section 29, 118, 119, 121 and 122 of the said Act.'

b. 'x x x Simply stated, an individual cannot acquire either by sale, transfer, assignment or lease, lands originally acquired under the free patent, homestead, or individual sale provisions of Commonwealth Act No. 141 if the total area of such acquisition added to his present landholdings exceeds one hundred forty-four hectares. x x x.'

c. 'x x x It must follow as a matter of course that since January 17, 1973 when the New Constitution went into full force, the maximum area of patented or titled land that an individual can acquire is only such as will not exceed twenty-four (24) hectares including his present landholdings. With these premises, it is our considered opinion that the maximum area that an individual could acquire under Article 122 of Commonwealth Act No. 141, as amended, has been amended or reduced to 24 hectares as provided for under Section 11, Article XIV, of the 1973 Constitution.'

Copies of the letter of plaintiff Guiang dated July 10, 1978 and the Opinion rendered by the Legal Department, Bureau of Lands, dated July 12, 1978 are attached, marked respectively as Annexes 'K' and 'K-1' and made integral parts of this pleading;

"7. On the scheduled August 3, 1978 hearing date, complainant and respondent both appeared before Investigating Fiscal Villaluz and in such hearing the following facts and points were clarified, established and/or admitted by the parties therein, to wit:

a. That respondent Filomeno C. Kintanar, in addition to the 29 hectares acquired by him through homestead patent, is in actual possession of an additional 146 hectares of land originally acquired under Sales Patent from the government under the provisions of the Public Land Act;

b. That of this mentioned 146 hectares of land, 2 lots with an area of 24 hectares each, or a total of 48 hectares, were already transferred and registered with the office of the Register of Deeds of Davao del Sur in the name of respondent Filomeno C. Kintanar by virtue of a Deed of Sale;

c. That respondent Kintanar admitted having executed an affidavit on September 1, 1975 in which respondent stated, among other things, the following:

'That, both my wife and I don't possess lands more than what the constitution or the law authorizes.'

d. That said affidavit was actually presented sometime in September 1975 by respondent Kintanar with the Register of Deeds of Davao del Sur in compliance with registration requirements of that office preparatory to effecting registration of such Deed of Sale, cancelling the subsisting certificate of title in the names of complainant and his spouse as Vendors, and effecting transfer of title to his name (respondent) as Vendee;

e. That complainant duly furnished the Investigating Fiscal and respondent Kintanar with the Opinion rendered by the Legal Division, Bureau of Lands, dated July 12, 1978, copy already attached and marked Annex 'K' of this pleading, pertinent portion quoted as follows:

'As regards your third question on whether the maximum area that an individual could acquire under section 122 of Commonwealth Act No. 141, as amended, has been amended from 144 to 24 hectares our reply is in the affirmative ...x x x.'

Copy of the aforementioned affidavit executed by respondent Kintanar bearing date of September 1, 1975 is hereto attached, marked as Annex 'L' and made an integral part of this Opposition.

"8. Upon another letter query addressed by plaintiff Benjamin V. Guiang to the Chief, Legal Department, Bureau of Lands, copy furnished the Land Management Division of that Bureau anent the issue of whether in the interpretation of section 122 of Commonwealth Act No. 141 as amended by section 11, Article XIV of the 1973 Constitution, husband and wife are to be considered as one person or single citizen, the Chief, Legal

Division, Bureau of Lands, replied, among others, in this wise:

'For the purpose of ascertaining the maximum acreage of twenty-four (24) hectares of patented lands originally covered by a sales patent under section 122 of Commonwealth Act 141, as amended by the 1973 Constitution that any Filipino citizen could acquire or possess including his present landholdings, husband and wife are to be considered as a single citizen.'

"Xerox copies of said plaintiff's letter query dated September 14, 1978 and the reply letter of the Chief, Legal Division, Bureau of Lands dated September 19, 1978 are hereto attached, marked respectively as Annexes 'M' and 'M-1' and made integral parts of this pleading;

"9. On two (2) substantial issues covered in the foregoing cited opinions issued by the Legal Division, Bureau of Lands, a communication incorporating the latest statement of official policy of that Bureau has evolved in the form of a recent letter addressed to plaintiff Guiang, substantial portions quoted as follows:

"ON WHETHER HUSBAND AND WIFE ARE TO BE CONSIDERED AS ONLY ONE PERSON FOR PURPOSE OF IMPLEMENTING SEC. 122 OF C.A. 141:

'In reply to your letter dated September 14, 1978 requesting information regarding the interpretation, is based on the legal principle that a legally married couple is considered as only one person and property acquired by them during their marriage belongs to the conjugal partnership.'

"ON THE MAXIMUM AREA OF PUBLIC LANDS THAT CAN BE ACQUIRED BY A CITIZEN OF THE PHILIPPINES:

'It is also the policy of this Office that the maximum area that can be acquired by an individual under the same Section has been accordingly reduced from 144 to 24 hectares in line with the provision of the New Constitution reducing the area that can be purchased by an individual to only 24 hectares.'

"Copy of such communication issued by Director of Lands Ramon N. Casanova dated September 20, 1978 is attached, marked Annex 'N' and made integral part of this pleading.

DISCUSSION AND ARGUMENT

"Commonwealth Act No. 141, known as Public Land Act, provides:

'Sec. 122. - Except in cases of hereditary succession, no land or any portion thereof originally acquired under the free patent, homestead, or individual sale provisions of this act, or any permanent improvement on such land shall be transferred or assigned to any individual, nor shall such land or any permanent improvement thereon be leased to such individual when the area of said land, added to that of his own, shall exceed one hundred and forty-four hectares. Any transfer, assignment or lease in violation hereof shall be null and void.' (Underscoring ours.)

"The 1973 Constitution of the Philippines provides in its ARTICLE XIV the following, to wit:

'Sec. 11. The National Assembly, taking into account conservation, ecological, and developmental requirements of the natural resources, shall determine by law the size of lands of the public domain which may be developed, held or acquired by, or leased to, any individual, corporation, or association, and the conditions therefor. No private corporation or association may hold alienable lands of the public domain except by lease not to exceed one thousand hectares in area; nor may any citizen hold such lands by lease in excess of five hundred hectares or acquire by purchase or homestead in excess of twenty-four hectares. No private corporation or association may hold by lease, concession, license, or permit timber or forest lands and other timber or forest resources in excess of one hundred thousand hectares; however, such area may be increased by the National Assembly upon

recommendation of the National Economic and Development Authority.' (Underscoring ours.)

CONVEYANCE VIOLATIVE OF CONSTITUTIONAL PROHIBITION

Relief sought by means of

petition at bar contrary to

terms of compromise

agreement_____ _

"A perusal of the Compromise Agreement entered into between the parties and approved by the Court in its Decision will show that the supposed vendees of the six (6) lots subject thereof are none other than the spouses Filomeno C. Kintanar and Corazon B. Kintanar; yet in their proposed Deed of Sale, reiterated once more in another way thru their petition at bar, defendants demand from plaintiffs under pain of contempt the execution in their favor of the necessary deed of conveyance over the remaining four (4) lots, known as Lots 'B-1' and 'B-2' covered by Sales Patent 2521 and O.C.T. No. 12281, and Lots 'A-2' and 'A-3' covered by Sales Patent 3180 and O.C.T. No. 16465. This is plain from a comparison of the proposed vendees specified by defendants in their petition at bar with those mentioned in their proposed Deed of Sale, Annex 'H-1', thus:

"Petition At Bar

Lot 'B-1' to Corazon B. Kintanar Lot 'B-1' to Corazon B. Kintanar

Lot 'B-2' to Corazon B. Kintanar Lot 'B-2' to Fil-Roger Kintanar

Lot 'A-2' to Filomeno C. Kintanar Lot 'A-2' to Cora-Ann B. Kintanar

Lot 'A-3' to Fil-Roger B. Kintanar Lot 'A-3' to Cora-Lou B. Kintanar

"As to the execution of a Deed of Sale by plaintiff favor of defendant Filomeno C. Kintanar over Lot 'A-2' with an area of 25 hectares, plaintiffs respectfully submit that this just cannot be legally done for such would be violative of the aforesaid Section 122 of Commonwealth Act No. 141, as amended, in correlation with the provisions of Section 11, Article XIV, 1973 Constitution of the Philippines, which took effect January 17, 1973. The maximum area of public land that under the Constitution could be acquired, either by sale, transfer or assignment after such date by any citizen of the Philippines, including said defendant, is 24 hectares, including all his present landholdings.

"Same is true with respect to any conveyance proposed to be made in the proposed Deed of Sale in favor of defendant Corazon B. Kintanar over Lot 'B-1' with an area of 24 hectares which, as earlier contended, will likewise be null and void for being violative of Section 11, Article XIV of the 1973 Constitution, amending Section 122 of C.A. No. 141. And with more reason since, as admitted by defendant Kintanar as respondent before the Davao Special Counsel, upon the effective date of the 1973 Constitution he and his wife were already themselves holders of 29 hectares of land of the public domain originally granted to them thru a homestead patent. And following the Opinions or statements respectively rendered by the Chief, Legal Division, as well as the Director of the Bureau of Lands, Annexes 'M-1' and 'N', defendants-spouses are, for purposes of the Public Land Act, to be considered as a 'single citizen' or as 'only one person', such that they are both barred from acquiring by sale or homestead even a single square meter more of public land.

"And it is plain from paragraphs 2, 4 and 5 of the Compromise Agreement that the Spouses Kintanar as defendants are the only intended vendees of Lots 'B-1', 'B-2', 'A-2' and 'A-3'. Likewise plain it is that defendants Cora-Ann, Cora-Lou, and Fil-Roger, all surnamed Kintanar, as equally interested parties to the petition at bar, by having also affixed their respective signatures to the Compromise Agreement, have

expressly waived whatever rights they may have over any of the 6 lots subject-matter of the three (3) cases at bar. Such express waiver is found in par. 6 of said compromise agreement, pertinent portion quoted as follows:

'6. That this Compromise Agreement hereby supersedes all other agreements, contracts to sell and other documents pertaining to the lots in question.'

"Compromise Agreement Void

Insofar as same provides for

sale to defendants-spouses

Kintanar_____ _

"As stated earlier, the Compromise Agreement provides for a sale by plaintiffs to defendants-spouses Kintanar of six (6) lots which have a total area of 146 hectares of lands covered by Sales Patents originally acquired by individual purchase by plain-tiffs from the government before the effectivity of the 1973 Constitution.

"Following the mandate of Sec. 122 of C.A. 141 which provides that 'Any transfer, assignment or lease in violation hereof shall be null and void', it inevitably follows that the compromise agreement, insofar as it requires the doing of a prohibited act, such as a sale in favor of certain disqualified persons, is null and void. And any decision approving the same must likewise, and necessarily so, be, considered null, following the pronouncement of the Supreme Court in one case:

'A void judgment or order is in legal effect no judgment or order.' (Paredes v. Moya, 61 SCRA 526).

Thus it is plain that execution may not issue based upon a void compromise agreement, even if the same bears approval by the court, on account of want of jurisdiction.

"Due to the foregoing reasons, plaintiff-spouses Aurelio V. Hiquiana and Pastora O. Hiquiana similarly contend and submit that they, too, cannot be compelled to execute the Deed of Sale demanded of them by defendants by means of the petition at bar.

"Plaintiffs under the circum-

stances not liable for contempt

"Assuming as contended by counsel for defendants in their petition at bar, without, however, conceding as true, that plaintiffs have unjustly disobeyed the decision of this Honorable Court commanding the execution of certain deeds of conveyance of real property in favor of defendants-movants as provided in the compromise agreement, yet plaintiffs submit that such act or omission on their part should not necessarily render them liable for contempt. Defendants-movants have not shown in any manner whatever that plaintiffs and only plaintiffs can perform the acts being insisted upon, to the exclusion of all others. Our Supreme Court has had occasion to explain when a disobedient party is not liable for contempt in those cases where the court itself may direct that the specific act or acts subject of the order be done by some designated person, thus:

'Section 9, Rule 39, in connection with Section 7 of Rule 71, provides that if a person is required by a judgment or order of the court to perform any other act than payment of money or sale or delivery of real or personal property, and said person disobeys said judgment or order while it is yet in his power to perform it, he may be punished for contempt and imprisonment until he performs said order. The provision is applicable only to specific acts which the party or person must personally do, because his personal qualification and circumstances have been taken into consideration in accordance with the provision of Article 1161 of the Civil Code. But if a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform specific acts which may be performed by some other persons or in some other ways provided for by law with the same effect as in the present

case, section 10 not section 9 of Rule 39 applies; and under the provision of said section 10 the court may direct the act to be done at the cost of the disobedient party by some other person appointed or designated by the court and the act when so done shall have the effect as if done by the party himself.' (Underscoring ours.)

"COMPROMISE AGREEMENT THOUGH VOID

AS A SALE MAY YET BE UPHELD AS A LEASE

"As the parties are well aware, the subject-matter of the Compromise Agreement and decision in the three (3) above-captioned civil cases concerns certain titled or patented lands of the public domain originally acquired from the government which have a total area of 146 hectares. It appearing that defendants-spouses were already holders of some 29 hectares of public land acquired before the effective date of the 1973 Philippine Constitution, they are, however, barred or inhibited from acquiring by sale, transfer or assignment even one single square meter of the 146 hectares of land subject of the compromise agreement in the above-entitled cases. In view of this state of affairs, plaintiffs venture to ask: In view of their having already received the amount of P220,000.00 from defendants pursuant to a void compromise agreement, how could the ends of law and justice be served, in all fairness to the defendants? It is respectfully submitted that the only lawful, constitutional and logical way to give effect to the obligations and situation generated by the compromise agreement is this: to consider or treat the same as a lease contract or agreement, with the amounts paid by defendants treated as lease rentals or advances to plaintiffs under a continu-ing lease.

"In this connection it may be recalled that plaintiffs-spouses and defendants-spouses Filomeno C. Kintanar and Corazon B. Kintanar originally had in mind the possession by the latter of the six (6) lots subject matter of the compromise agreement in concept of lease. These are indicated or shown by the following:

"a. On December 4, 1972 plaintiffs Spouses Guiang and defendant Corazon B. Kintanar, acting for her children Cora-Ann, Cora-Lou, Fil-Roger and herself, with the marital consent of her husband Filomeno C. Kintanar, also defendant in the above-entitled cases, executed an Agreement Of Purchase And Sale over Lots 'B-1', 'B-2', 'B-3' and 'B-4' in question with the following resolutory provision:

'5. That failure of the vendees to pay the second and third installments as they fail due, shall cause the cancellation of this agreement x x x and whatever improvements introduced by the vendees on said lots shall be considered rental and liquidated damages:' (Underscoring ours.)

(Please see Annex 'A' of the Complaint in Civil Case No. Q-19573)

"On January 30, 1973, plaintiffs-spouses Aurelio V. Hiquiana and Pastora O. Hiquiana and defendant Filomeno C. Kintanar also executed an Agreement of Purchase and Sale over Lots 'A-2' and 'A-3' which, among others, contained the following conditions:

'3. That the BUYER shall take possession of the property as a LESSOR until the entire purchase price is paid, for said property is leased by Atty. & Mrs. Benjamin V. Guiang up to December 31, 1973 from the SELLERS.

"5. That in case the Buyer shall fail to pay two consecutive installments due, all rights and interests of the said Buyer in and to the above-mentioned property shall ipso facto, cease and terminate and all payments made by him prior to said default be deemed forfeited and waived in favor of the SELLERS in settlement of rents and liquidated damages.' (Underscoring ours.)

"(Please see copy of said Agreement Of Purchase and Sale already attached as Annex 'A' of the Complaint in Civil Case No. Q-19574).

"Plaintiffs filed the above-captioned Civil Cases Nos. Q-19573 and Q-19574 against defendants for the enforcement of the above-mentioned resolutory conditions or penal provisions of the above-mentioned

Agreements of Purchase and Sale by the terms of which said agreements were deemed cancelled, with all installments paid to plaintiffs considered payments of rentals and damages, defendants having failed to pay the specified installments as they fell due.

"As to what will be the reasonable rentals of the said six (6) lots subject matter of said cases and the compromise agreement, plaintiffs respectfully submitted that this be fixed at the stipulated seventy percent (70%) of the gross produce or income of the lands, minus payments already advanced to plaintiffs, considering the intention of the parties as indicated in their management contract dated February 15, 1973 which concerns lands adjoining the six (6) lots herein. (Please see copy of Management Contract, copy attached as Annex 'A' to the Complaint in Civil Case No. Q-19572).

"The payments made to plaintiffs in concept of the purchase price under the compromise agreement by defendants Filomeno C. Kintanar and Corazon B. Kintanar in the total amount of P220,000.00 can and may be treated instead as payment of reasonable rentals for the use and occupancy by defendants of the six (6) lots subject matter of said agreement, together with all previous amounts paid since February 15, 1973, considering that defendants have since such date admittedly been and continue to remain in exclusive possession thereof up to this very day. Of course, this would be understood as subject to the reservation on the part of plaintiffs of the right to demand an accounting of the produce handled by defendants during such period.

Preliminary Hearing Essential

"In view of the foregoing situation, this Honorable Court may, serve the ends of justice by directing the holding of a preliminary hearing to ascertain whether or not the compromise agreement is void, or whether the same subsist to bind the contracting parties insofar as concerns a lease of the lots covered by it. This course of action is suggested in view of the pronouncement of the Honorable Supreme Court in *Iboleon v. Sison*, 50 Phil. 281, where it held:

'A Judge of Court, which sets aside a judgment rendered upon the consent of parties and based on a compromise entered into by them, which was converted into such judgment, cannot modify nor reverse it without the consent of said parties, or without first having declared in an incidental preliminary hearing, that such compromise is vitiated by any of the grounds for nullity enumerated in Art. 1817 of the Civil Code.' (Underscoring ours.)

"Section 11, Article XIV of the 1973 Constitution *aforecited* allows a citizen of the Philippines to acquire by lease up to five hundred (500) hectares of lands of the public domain. Following the opinions rendered by the Legal Department, Bureau of Lands, Annexes 'K-1' and 'M', by Implication Section 122 of C.A. No. 141 is deemed amended by the New Constitution in the sense that the new maximum limit as to the area of lands of the public domain that could be acquired under lease by an individual has been increased from the original limit of 144 hectares to 500 hectares as of the present.

P R A Y E R

"WHEREFORE, in view of all the foregoing considerations, plaintiffs in the three (3) above-captioned civil cases most respectfully pray of this Honorable Court that:

"1. The petition of defendants, insofar as it seeks to have plaintiffs as respondents declared in contempt of court or divested of title over Lots 'B-1', 'B-2', 'A-2' and 'A-3' be DENIED for lack of merit;

"2. Plaintiffs be declared as being relieved and freed from the duty and responsibility of executing any deed of sale in favor of defendants under the compromise agreement and decision of this Honorable Court both dated August 20, 1975;

"3. The Deed of Absolute Sale, Annex 'A' of this pleading, be declared null and void;

"4. Defendants-spouses Filomeno C. Kintanar and Corazon B. Kintanar be ordered to execute, immediately

and without unnecessary delay, a Deed of Re-conveyance over the two (2) lots subject-matter thereof, known as Lots 'B-3' and 'B-4', in favor of plaintiffs-spouses Benjamin V. Guiang and Natividad H. Guiang;

"IN THE ALTERNATIVE, plaintiffs as respondents most respectfully pray that a preliminary hearing be conducted for the purpose of determining whether the compromise agreement dated August 20, 1973 as affirmed by the decision of this Honorable Court of same date is valid and enforceable either as a sale, or as a lease, or void ab initio and thereafter, the corresponding order or decision be rendered conformably with law and justice.

"Such other reliefs and remedies as may be considered just, equitable, proper and constitutional in the premises are likewise prayed for.

Quezon City

Quezon City, Philippines, September 23, 1978.

GUIANG & PRIMICIAS LAW OFFICES

43 Detroit St., Quezon City

By:

(Sgd.) BENJAMIN V. GUIANG

and

(Sgd.) JUAN A.B. PRIMICIAS

Attorneys for the Plaintiffs"

(Annex G, pp. 65-82, Record)

Considering the foregoing quoted respective pleadings of the parties, what comes out as the basic question We are called upon to resolve is whether or not the compromise agreement in dispute was void ab initio. And We do not hesitate to say that the answer to that question is definitely in the affirmative or YES.

Earlier, in resolving the first issue between the parties, as formulated by Us, We came to the inevitable conclusion that Section 122 of the Public Land Act has been amended by the 1973 Constitution by reducing the area of land acquired under the Act that could be transferred by any purchaser, patentee or homesteader to only 24 hectares instead of the 144 hectares allowed under the 1935 Constitution. Now, the compromise agreement, executed on August 20, 1975 and here in dispute, provides for the transfer of a total of 146 hectares. It inevitably follows then that said compromise agreement contravenes not only a statute but the fundamental law of the land. Adding to its being contrary to law, which undoubtedly is also covered by the public policy expressed in the Constitution, is the fact that private respondents, the Kintanars, already owned at the time of the agreement a lot of 29 hectares which they had acquired also from the government pursuant to the Public Land Act. Such being the situation, it is incontestable that under Paragraph (1) of Article 1409 of the Civil Code said agreement is "inexistent and void from the beginning" since its "object or purpose is contrary to law - - or public policy".

It is of no consequence, pursuant to the same article, that petitioners, the Guiang spouses, executed on August 21, 1975, apparently in ratification of the impugned agreement, the deeds of sale covering the two lots already referred to and that petitioners actually received in part or in whole the money consideration stipulated therein, for according to the same Article 1409, contracts contemplated therein, as the one We are dealing with, "cannot be ratified nor the defense of its illegality be waived." Neither is it material, much less decisive, that petitioners had not earlier judicially moved to have the same annulled or set aside. Under Article 1410 of the Civil Code, "(t)he

action or defense for declaration of the inexistence of a contract does not prescribe."

In this connection, that is, as to the apparent delay in petitioners' invocation of the inexistence or nullity of the agreement oft referred to above, it is but meet to mention here, as somewhat of an added equitable consideration in favor of petitioners, that as related in their opposition quoted above, they realized or at least began to have apprehensions about the validity of what they had done practically before the ink with which they signed the agreement had dried. This is conceded, albeit not in so many words, by private respondents in their memorandum (p. 14). Indeed, in an effort to have his misgivings verified, as early as September 22, 1975, petitioner Benjamin Guiang wrote the Commissioner of Land Registration relative thereto. Unfortunately for petitioners, in cavalier fashion, the Commissioner merely considered that the registration of the two deeds of sale covering Lots B-3 and B-4, OCT 12281 was already a *fait accompli* and like Pontius Pilate simply washed his hands off the matter.[1] Not contented with such official indifference to a matter of constitutional importance, petitioners sought redress from the Office of the President and the Department (now Ministry) of Justice and lastly, the Director of Lands, who as already related earlier gave the opinion favorable to petitioners, which We have earlier quoted herein approvingly. Petitioners even went to the extent of filing a charge of perjury against respondents on account of their obviously false affidavit submitted to the Register of Deeds denying in effect the indisputable fact that they were already then the owners of more than 24 hectares of land acquired under the Public Land Act. Such criminal prosecution is still pending review in the Ministry of Justice.

Notable, if not admirable, indeed, was the continuous, consistent and unrelenting effort of petitioners to rectify a constitutional misstep they had taken in rather hastily entering into the questioned compromise. That it may be said that they might have thought at the time that it was a fair bargain does not in law minimize the undeniable invalidity and contravention of public policy involved in their act. To be sure, We can believe that a judgment herein favorable to petitioners may result in material benefits to them, but such probable contingency is merely incidental and should not blur Our eyes in any degree to the matter of constitutional policy We are sworn to pursue and implement.

- B -

At this point, inasmuch as private respondents have taken the judicial initiative to try to enforce the agreement in dispute, or, in the words of petitioners "jumped the gun on them" by filing a motion for execution, of necessity, We have to go into the application in these instant cases of the provisions, principles and jurisprudence regarding the doctrine We might briefly refer to as that of "in pari delicto".

To start with, petitioners invoke not only Article 1416 of the Civil Code but also the ruling of this Court in the leading case of *Philippine Banking Corporation vs. Lui She*, 21 SCRA 52 in support of their contention that the rule of in pari delicto is inapplicable to these cases, and, therefore, they may recover the above-mentioned two lots, Lots B-3 and B-4, OCT 12281. Article 1416 provides:

"ART. 1416. When the agreement is not illegal per se but is merely prohibited, and the prohibition by the law is designed for the protection of the plaintiff, he may, if public policy is thereby enhanced, recover what he has paid or delivered."

This article, it is imperative to note, allows recovery of what has been paid or delivered pursuant to an inexistent contract only when the agreement "(1) is not illegal per se but merely prohibited; (2) the prohibition is for the protection of the plaintiffs and (3) if public policy is enhanced thereby." Substantially, We may say, without the need of quoting therefrom, the foregoing postulation is what was applied by Us in the *Philippine Banking* case.

Referring to the situation now before Us, there can be no doubt that upholding the petitioners would enhance the

public policy expressed in the Constitution of limiting transfers of property acquired from the government to only 24 hectares as well as that implicit in the provision of the Public Land Act prohibiting any citizen from acquiring by purchase or homestead disposable public lands in excess of twenty-four (24) hectares. It may also be said that these limitations or prohibitions are intended for the protection of the actual landholder or transferor or vendor-to-be because it safeguards him, for one thing, against being more or less induced under certain circumstances to part with his holding thru importunings or other insidious devices or schemes and, for another thing, he is enabled to work with peace of mind on his land and utilize the same for the purposes for which he had acquired it.

In regard to the requirement that the agreement must not be illegal per se, it might be contended that Our holding that the compromise under consideration is contrary to public policy removes the recovery of the two delivered lots and the further non-enforcement of the impugned orders of the trial court from the application of Article 1416. We hold it is not so. Any act in violation of the limitations and prohibitions herein involved is *malum prohibitum*, not *malum in se*. An act or contract that is illegal per se is one that by universally recognized standards is inherently or by its very nature bad, improper, immoral or contrary to good conscience. On the other hand, what is contrary to public policy may not be necessarily universally so, for public policy, like public interest, whether expressed in a Constitution or in any statute or official declaration of the duly constituted authorities or evinced from the situation or circumstances of the time concerned, is something dictated by the conditions obtaining within each country or nation. Indeed, in respect to the very matter under discussion, namely, the limitation and control of the disposition of lands of the public domain, every government in the world can have its own distinct policy suitable and peculiar to its internal interest, including the history mores, customs and traditions of the people thereof. For instance, the provisions of our Constitution and our laws covering such matter and the others relative to the conservation of our natural resources exclusively for us, Filipinos, are easily distinguishable from those of the Constitutions and laws of the United States, Russia, England, Singapore, Malaysia, etc., etc. Thus, the juridical concept of what is illegal per se cannot be necessarily equated with what is contrary to public policy in all instances. In the cases at bar, the disputed compromise agreement is contrary to the public policy embodied in our Constitution and the Public Land Act as amended by the former since January 17, 1973, but it is not illegal per se. Such may not be the case in other countries.

Consequently, nothing objectionable, juridically speaking, lies in the way to having the prayer of petitioners granted. Since they are not, in terms of the *in pari delicto* doctrine and under the facts of these cases, the once trying to enforce an agreement contrary to the public policy of our Charter and our laws, such circumstance that they are the ones resisting the invocation of said doctrine is what makes their posture more legally tenable. As already stated earlier, under Article 1410 of the Civil Code, "the action or defense for the declaration of inexistence of a contract does not prescribe" just as under Article 1409, "(n)either can the right to set up such defense of illegality be waived." From which it is clearly implicit that one against whom the doctrine is invoked may deny its application whether he be plaintiff or defendant, or the movant or oppositor. Here, private respondents are the movants for enforcement. We hold that as oppositors to such motion, petitioners are in the right in putting up the defense that the agreement and orders sought to be enforced are contrary to public policy and that the said agreement is not illegal per se, hence, Article 1416 affords relief to them.

- C -

Having arrived at the foregoing conclusions, it follows necessarily that the fact that private respondents cannot deny that on August 20, 1975, they were already the holders of a torrens title over 29 hectares of land acquired by them by virtue of the Public Land Act from disposable lands of the public domain, is a total bar to the enforcement of the orders they are seeking, and this is the reason why We cannot just reduce the 146 hectares

under litigation to only 24 hectares, which would have been legally possible, if private respondents' situation were otherwise. But able counsel for private respondents would try to save their case by inviting our attention to the fact that the original contracts of conveyance between the parties were entered into prior to January 17, 1973. No matter. Those contracts are not the ones involved here. What is here in question is the compromise agreement of August 20, 1975 which precisely and pointedly provides that "the Agreement shall supersede all other agreements, contracts to sell and other documents pertaining to the lots in question," for which reason the only parties-in-interest to the instant proceeding have become exclusively herein petitioners and respondents and none others, particularly, the children of the Kintanars, notwithstanding their having been parties in Civil Case No. Q-19573 of the trial court, as original purchasers.

- D -

Petitioners suggest that to avoid entire invalidity of the questioned agreement, it be construed merely as a lease. We are loath to follow the suggestion for the simple reason that it is juridically doubtful how a contract worded in the clearest tenor as one of transfer or conveyance of the title or ownership of the property concerned itself could be construed as merely a lease thereof. We believe and so hold that it would be simplest and best to let the natural consequence of the constitutional invalidity, which We here declare, of the compromise agreement and of the decision based thereon as well as the subsequent orders of execution of such decision be allowed to follow its natural course. By this is meant that: (1) the private respondents, the Kintanar spouses shall reconvey to petitioners, the Guiang spouses, the two lots, Lots B-3 and B-4 previously covered by OCT 12281 without any compensation but solely by virtue of this judgment; (2) the petitioners shall retain the remaining lots, Lots B-1 and B-2 covered also by OCT 12281 and Lots A-2 and A-3 covered by OCT 16465, without any obligation to convey the same to private respondents, or, to put it the other way, private respondents may not compel the petitioners or any of them, judicially or otherwise to convey to them (private respondents) much less to any of the latter's children any of the lots or lands aforementioned; and (3) instead of considering whatever private respondents have paid not only under the contracts hereby invalidated but also under the original transaction between the parties, the same should be deemed as damages due petitioners for their inability to have possession of the lands herein involved up to the time the judgment herein is complied with, at the rate of Fifty Thousand (P50,000.00) Pesos a year from August 20, 1975.

In this connection, the petition alleges that only P240,000.00 have been paid by private respondents, albeit a higher figure is vaguely alleged in the later pleadings of petitioners, and petitioners estimate the rentals, if We should accept the theory of lease proposed by them, to be P736,000.00 up to the present. We are not inclined to accept those figures. We are more impressed by the allegation on page 3 of private respondents' memorandum that they have fully paid the P220,000.00 consideration stipulated in the compromise in addition to P136,000.00 they had already previously paid under the contracts that became the subject of the three cases that were precisely attempted to be compromised on August 20, 1975. We are also inclined to accept as more reasonable the P50,000.00 estimate made by private respondents of the net yearly yield of the lands in dispute.

With the foregoing view We have taken of these cases now before Us, We see no need to resolve the other issues discussed by the parties in their memoranda and motions.

WHEREFORE, judgment is hereby rendered granting the herein petition and declaring the rights of the parties to be as they are stated above in the paragraph preceding the penultimate one of the above opinion. Costs against private respondents. It is so ordered.

Concepcion, Jr., Fernandez, and De Castro, JJ., concur.
Abad Santos, J., separate opinion concurring in the result.

Aquino, J., did not take part.

[1] What aggravates the action of the Commissioner is that he took for granted the truth of the affidavit that the Kintanars did not own land acquired from the government in excess of that allowed by the Constitution and the Public Land Act.

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CONCURRING OPINION

ABAD SANTOS, J.:

I concur in the result in that if the agreement be given effect Sec. 122 of C.A. No. 141, as amended by C.A. No. 615 on May 5, 1941, will be violated. The Kintanars already have 29 hectares of land acquired under the Public Land Act (C.A. No. 141, as amended) and if they acquire an additional 146 hectares of land which was also acquired under the Public Land Act they will exceed the statutory limit of 144 hectares. In arriving at this conclusion I take note of the fact that the 146 hectares sought to be conveyed to the Kintanars were acquired subsequent to the amendment of Sec. 122 of C.A. No. 141 by C.A. No. 615 and are accordingly governed by the latter law. I am not prepared to say that Sec. 122 of C.A. No. 141, as amended, has been further amended by Art. XIV, Sec. 4 of the 1973 Constitution in that the statutory limit has been reduced from 144 to 24 hectares only. On the basis of the Gold Creek case, it could be that the law governing conveyance of lands formerly of the public domain should be governed by the laws extant at the time of their acquisition.

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