

FRANCISCO ALONSO (DECEASED), SUBSTITUTED BY MERCEDES V. ALONSO, TOMAS V. ALONSO AND ASUNCION V. ALONSO, PETITIONERS, VS. CEBU COUNTRY CLUB, INC., RESPONDENT.

G.R. No. 130876. December 05, 2003

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

In our Decision dated January 31, 2002, we declared that:

... neither Tomas N. Alonso nor his son Francisco M. Alonso or the latter's heirs are the lawful owners of Lot No. 727 in dispute. Neither has the respondent Cebu Country Club, Inc. been able to establish a clear title over the contested estate. The reconstitution of a title is simply the re-issuance of a lost duplicate certificate of title in its original form and condition. It does not determine or resolve the ownership of the land covered by the lost or destroyed title. A reconstituted title, like the original certificate of title, by itself does not vest ownership of the land or estate covered thereby.[1]

on which basis, the dispositive portion of the decision reads:

WHEREFORE, we DENY the petition for review. However, we SET ASIDE the decision of the Court of Appeals and that of the Regional Trial Court, Cebu City, Branch 08.

IN LIEU THEREOF, we DISMISS the complaint and counterclaim of the parties in Civil Case No. CEB 12926 of the trial court. We declare that Lot No. 727 D-2 of the Banilad Friar Lands Estate covered by Original Certificate of Title Nos. 251, 232, and 253 legally belongs to the Government of the Philippines.

No costs.

SO ORDERED.[2]

Petitioners and respondent filed separate motions for reconsideration, each assailing a different aspect of the decision.

Petitioners, in their Motion for Reconsideration dated March 6, 2002, vigorously argue that: (a) the majority decision unduly deprives petitioners of their property without due process of law and "in a manner shocking to good conscience"; (b) in invalidating the sale of Lot 727 to the late Tomas Alonso, the ponencia unfairly deviated from established doctrine to favor a mere obiter dictum as misapplied in *Liao vs. Court of Appeals*, using as basis factual findings either unsupported by the evidence or contradicted by the appellate court's findings of fact; (c) the core issues of fraud and want of jurisdiction afflicting the reconstitution of respondent Cebu Country Club's title were not squarely and frontally met, to the prejudice and damage of the petitioners; and (d) the dissenting opinion deserves a second hard look as it presents a more balanced, sober, factually accurate, and juridically precise approach to the critical issues of this case, including prescription and laches.

On the other hand, respondent Cebu Country Club, Inc., in its Motion for Reconsideration dated March 5, 2002,

staunchly assails the decision insofar as it declared that "Lot 727-D-2 of the Banilad Friar Lands Estate legally belongs to the Government of the Republic of the Philippines". Respondent argues that the Office of the Solicitor General (OSG), as representative of the Government, has not intervened nor has it been impleaded in the Regional Trial Court (RTC) nor during the appeal in the Court of Appeals, and, the Torrens Certificate of Title, TCT No. RT-1310 (T-11351) of respondent, covering Lot 727, Banilad Friar Lands Estate, cannot be collaterally attacked and nullified in this case at bar.

We find no merit in petitioners' motion for reconsideration. The matters raised in the motion have already been substantially discussed in the decision.

It must be emphasized that in civil cases, the burden of proof to be established by preponderance of evidence is on the plaintiff who is asserting the affirmative of an issue. He has the burden of presenting evidence required to obtain a favorable judgment, and he, having the burden of proof, will be defeated if no evidence were given on either side.[3] Inasmuch as petitioners pray for the "Declaration of Nullity and Non-Existence of Deed/Title, Cancellation of Certificates of Title and Recovery of Property" against the respondent, they had the burden to establish their claims of ownership of the subject property which they failed to do in this case.

Section 18 of Act No. 1120 or the Friar Lands Act[4] unequivocally provides: "No lease or sale made by the Chief of the Bureau of Public Lands (now the Director of Lands) under the provisions of this Act shall be valid until approved by the Secretary of the Interior (now, the Secretary of Natural Resources). Thus, petitioners' claim of ownership must fail in the absence of positive evidence showing the approval of the Secretary of Interior. Approval of the Secretary of the Interior cannot simply be presumed or inferred from certain acts since the law is explicit in its mandate. This is the settled rule as enunciated in *Solid State Multi-Products Corporation vs. Court of Appeals*[5] and reiterated in *Liao vs. Court of Appeals*.[6] Petitioners have not offered any cogent reason that would justify a deviation from this rule.

Contrary to petitioners' protestations, we squarely resolved the core issues of fraud and want of jurisdiction afflicting the reconstitution of respondent's title. While we held that the issue of the validity of respondent's title is factual which cannot be reviewed on appeal, nevertheless, we have answered each ground raised by petitioner in assailing respondent's title.[7] Needless to stress, mere allegations of fraud are not enough.[8] Fraud is never presumed but must be proved by clear and convincing evidence,[9] mere preponderance of evidence not even being adequate.[10] As we have held in *Saguid vs. Court of Appeals*, contentions must be proved by competent evidence and reliance must be had on the strength of the party's own evidence and not upon the weakness of the opponent's defense. [11] Petitioners failed to discharge that burden.

Moreover, it cannot be over-accentuated that Tomas Alonso, petitioners' predecessor-in-interest, never asserted any claim of ownership over the disputed property during his lifetime. When he was alive, Tomas Alonso did not exert any effort to have the title of the disputed property reconstituted in his name or seek recovery thereof from the respondent which was in possession since 1931.[12] Significantly, Tomas Alonso had caused the reconstitution of his title on Lot 810, which is adjacent to the disputed property, sometime in 1946 and yet petitioners failed to show that Tomas Alonso exerted the same effort to reconstitute his alleged title to the subject property. As successors-in-interest, petitioners merely stepped into the shoes of Tomas Alonso. They cannot claim a right greater than that of their predecessor. Notably, Tomas Alonso and his son Francisco Alonso were not ordinary or unschooled men. They were learned men of the law. They belonged to the landed gentry and, thus, had adequate financial resources at their disposal. Tomas Alonso was even a member of Congress. The length of time that has elapsed, spanning six decades, before the institution of the suit to recover the property, begs for a valid explanation, of which none was convincingly offered. Petitioners' silent acquiescence for several decades and belated invocation of an alleged right speak strongly of the staleness of their claim. Their claims can hardly

evoke judicial compassion. *Vigilantibus et non dormientibus jura subveniunt*. "If eternal vigilance is the price of safety, one cannot sleep on one's right for more than a tenth of a century and expect it to be preserved in its pristine purity".[13]

We likewise find no merit in respondent's motion for reconsideration insofar as the decision declared that Lot 727-D-2 of the Banilad Friar Lands Estate legally belongs to the Government of the Republic of the Philippines.

It must be borne in mind that the disputed property is part of the "Friar Lands" over which the Government holds title and are not public lands but private or patrimonial property of the Government[14] and can be alienated only upon proper compliance with the requirements of Act No. 1120 or the Friar Lands Act.

Sections 11, 12 and 18 of Act No. 1120 provide:

SECTION 11. Should any person who is the actual and bona fide settler upon and occupant of any portion of said lands . . . desire to purchase the land so occupied by him, he shall be entitled to do so at the actual cost thereof to the Government, and shall be allowed ten years from the date of purchase within which to pay for the same in equal annual installments, if he so desires, all deferred payments to bear interest at the rate of four per centum per annum on all deferred payments.

. . .

SECTION 12. ... When the cost thereof shall have been thus ascertained the Chief of the Bureau of Public Lands shall give the said settler and occupant a certificate which shall set forth in detail that the Government has agreed to sell to such settler and occupant the amount of land so held by him, at the prize so fixed, payable as provided in this Act . . . and that upon the payment of the final installment together with all accrued interest the Government will convey to such settler and occupant the said land so held by him by proper instrument of conveyance, which shall be issued and become effective in the manner provided in section one hundred and twenty-two of the Land Registration Act. ...

SECTION 18. No lease or sale made by the Chief of the Bureau of Public Lands under the provisions of this Act shall be valid until approved by the Secretary of the Interior.

It was thus primordial for the respondent to prove its acquisition of its title by clear and convincing evidence in view of the nature of the land. In fact, it is essential for both respondent and petitioners to establish that it had become private property. Both parties failed to do so. As we have held earlier, petitioners have not succeeded to prove their claim of ownership over the subject property.

On the part of respondent, it failed to shed light on how its predecessor in interest, United Services Country Club, Inc., acquired its title. Surprisingly, there is not even one evidence to show when and how its predecessor in interest, United Services Country Club, Inc., acquired the property from anybody. It may be true that records were destroyed during the war, but respondent has not offered any clear evidence, testimonial or documentary, on the circumstances surrounding the acquisition of Lot 727, thereby creating a wide chasm in its claim of ownership. It only serves to underscore the paucity of the proof of respondent to support its claim of ownership over the disputed property.

Respondent relies solely on its reconstituted title which, by itself, does not determine or resolve the ownership of the land covered by the lost or destroyed title. The reconstitution of a title is simply the re-issuance of a lost duplicate certificate of title in its original form and condition. It does not determine or resolve the ownership of the land covered by the lost or destroyed title. A reconstituted title, like the original certificate of title, by itself does not vest ownership of the land or estate covered thereby.[15]

Neither may the rewards of prescription be successfully invoked by respondent, as it is an iron-clad dictum that

prescription can never lie against the Government. Since respondent failed to present the paper trail of the property's conversion to private property, the lengthy possession and occupation of the disputed land by respondent cannot be counted in its favor, as the subject property being a friar land, remained part of the patrimonial property of the Government. Possession of patrimonial property of the Government, whether spanning decades or centuries, can not ipso facto ripen into ownership. Moreover, the rule that statutes of limitation do not run against the State, unless therein expressly provided, is founded on "the great principle of public policy, applicable to all governments alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided." [16]

Furthermore, the declaration in the Court's judgment that the subject property belongs to the Government is not an offshoot of a collateral attack on respondent's title. The validity of the reconstitution of title to the land in question was directly in dispute, and the proceedings before the trial court was in the nature of a direct attack on the legality of respondent's title.

Finally, our declaration that Lot 727-D-2 of the Banilad Friar Lands Estate legally belongs to the Government does not amount to reversion without due process of law insofar as both parties are concerned. The disputed property is a Friar Land and both parties failed to show that it had ceased to belong to the patrimonial property of the State or that it had become private property.

IN VIEW THEREOF, we DENY with finality the separate motions for reconsideration of the petitioners and respondent.

SO ORDERED.

Puno, Vitug, Carpio, Callejo, Sr., and Azcuna, JJ., concur.

Davide, Jr., C.J., in the result.

Panganiban, J., no part. Former partner of a party's counsel.

Quisumbing, J., joins the dissent of J. Tinga.

Ynares-Santiago, J., no part.

Sandoval-Gutierrez, J., see dissenting opinion.

Corona, J., shares the dissent of J. Tinga.

Carpio-Morales, J., no part. Concurred in the ponencia of the Court of Appeals.

Tinga, J., see dissenting opinion.

[1] Rollo, pp. 1099-1100.

[2] Rollo, p. 1104.

[3] *Hanopol vs. Shoemart, Inc.*, G.R. No. 137774, October 4, 2002; *Borlongan vs. Madrideo*, 323 SCRA 248, 255 (2000); *Republic vs. Court of Appeals*, 204 SCRA 160, 168 (1991); and, *Republic vs. Court of Appeals*, 182 SCRA 290, 301 (1990).

[4] Otherwise known as "An Act Providing For The Administration And Temporary Leasing And Sale Of Certain Haciendas And Parcels Of Land, Commonly Known As Friar Lands, For The Purchase Of Which The Government Of The Philippine Islands Has Recently Contracted, Pursuant To The Provisions Of Sections Sixty-Three, Sixty-Four And Sixty-Five Of An Act Of The Congress Of The United States, Entitled "An Act Temporarily To Provide For The Administration Of The Affairs Of Civil Government In The Philippine Islands, And For Other Purposes," Approved On The First Day Of July, Nineteen Hundred And Two".

[5] 196 SCRA 630 (1991).

[6] 323 SCRA 430, 442 (2000).

[7] Rollo, pp. 1092-1097.

[8] Barrera vs. Court of Appeals, 372 SCRA 312, 317(2001).

[9] Republic vs. Heirs of Felipe Alejaga, Sr., G.R. No. 146030, December 3, 2002; Cuizon vs. Court of Appeals, 260 SCRA 645, 671 (1996); and, Atilano vs. Inclan, 45 Phil. 246, 252 (1923).

[10] Palmares vs. Court of Appeals, 288 SCRA 422, 434 (1998); Inciong, Jr. vs. Court of Appeals, 257 SCRA 578, 586 (1996); and, Cu vs. Court of Appeals, 195 SCRA 647, 657 (1991).

[11] G.R. No. 150611, June 10, 2003; Heirs of Anastacio Fabela vs. Court of Appeals, 362 SCRA 531, 547 (2001); Javier vs. Court of Appeals, 231 SCRA 498, 504 (1994); and, Pornelloosa vs. Land Tenure Administration, 110 Phil. 986, 991 (1961).

[12] Decision, Supreme Court, promulgated on January 31, 2002, p. 12; Rollo, p. 1095.

[13] Ramos vs. Ramos, 61 SCRA 284, 303 (1974), citing Asociacion Cooperativa de Credito Agricola de Miagao vs. Monteclaro, 74 Phil. 281, 283.

[14] Jacinto vs. Director of Lands, 49 Phil. 853 (1926).

[15] Decision, pp. 16-17.

[16] Vina vs. Government of P.I., 65 Phil. 262, 265 (1938).

DISSENTING OPINION

SANDOVAL-GUTIERREZ, J.:

Before us are two separate motions for reconsideration of the majority Decision dated January 31, 2002 declaring that Lot 727 D-2 of the Banilad Friar Lands Estate in Cebu City "legally belongs to the Government of the Philippines."

Both the petitioners and the private respondent assail the Decision insofar as it declares a non-party (the Government) the owner of the disputed property. They contend this is a violation of due process. The petitioners point out that "the Government, through the Solicitor General, did not come in as a party entitled to the avails of the suit but as a seeming friend of the court to help resolve only the legality of a reconstituted title."^[1]

Petitioners invoke various other grounds for reversal of the majority Decision. But the most telling are the following: first, the Decision deviated from established doctrine and made findings of fact not supported by evidence and are contrary to the findings of fact by the Court of Appeals; second, there is an imperative need to reconcile two contradictory doctrines represented by *Dela Torre vs. Court of Appeals*,^[2] on the one hand, and *Solid State Multi-Products Corp. vs. CA*,^[3] on the other, in order to resolve the substantive merits of this controversy; third, the core issues of fraud and want of jurisdiction afflicting the reconstitution of Cebu Country Club's title were not squarely passed upon in the ponencia; and fourth, the issues of prescription and laches as discussed in Justice Jose A.R. Melo's Dissent deserve a second hard look.

Petitioners' motion for reconsideration is meritorious.

On the issue of due process, there is no question that from inception, the instant action for nullity of a reconstituted title has been between two parties only: Francisco Alonso and Cebu Country Club, Inc. The Solicitor General entered his appearance only by virtue of our Resolution dated November 22, 1999 asking him to comment on the validity of the reconstituted title. We did not direct him to intervene on behalf of the Government as claimant of the property.

By due process of law is meant "a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial."^[4] Basically, it contemplates notice and opportunity to be heard before judgment is rendered affecting one's person or property. The majority Decision actually awarded to the Government ownership of the disputed property, without notice to both parties and without giving them an opportunity to be heard and submit their opposition.

Next, petitioners assert that in nullifying the 1911 sale to Tomas Alonso, the majority did not only deviate from a doctrine of long standing first announced in *Bacalzo vs. Pacada*,^[5] but also made findings unsupported by the evidence and are contrary to the findings of fact by the Court of Appeals.

The doctrine that has developed concerning the acquisition of ownership over friar lands is that even without a final deed of sale or conveyance being executed by the government, the buyer acquires full ownership of the land upon completing his payment of the agreed price.^[6] It is the completion of such payment, not the execution of the final deed of sale, that vests full ownership in the buyer. In fact, the buyer has been consistently held to have become the beneficial owner of the land as early as the execution of the certificate of sale and his payment of the first installment on the price.^[7] In *De la Torre vs. Court of Appeals*,^[8] we even held that the certificate of sale "is a conveyance of the ownership of the property, subject only to the resolutory condition that the sale may be cancelled if the price agreed upon is not paid in full."^[9] Indeed, the contrary rule first announced in *Solid State Multi-Products Corp. vs. Court of Appeals*^[10] and reiterated in *Liao vs. Court of Appeals*,^[11] is not controlling. Aside from being an obiter, the rule enunciated in said cases that the sale of friar land is void if the final deed of conveyance does not bear the approval of the Secretary of Agriculture, is inconsistent with the long-settled doctrine of *Bacalzo* and *Dela Torre* that notwithstanding the failure of the government to issue the proper instrument of conveyance in favor of the buyer, still the latter acquires ownership over the subject friar land upon full payment of the price.

In Tomas Alonso's case, his payment of the agreed price was completed on March 19, 1919, per the handwritten entries on the Friar Lands Sale Certificate Register No. 734, marked as Exhibit "A". On that date, he legally acquired full ownership of Lot 727 D-2. Therefore, the nullification of the sale to Tomas Alonso on the ground that the deed of final conveyance did not bear the approval of the Secretary of Agriculture clearly deviates from established doctrine of long standing.

It bears emphasis that Tomas Alonso's purchase of the property was invalidated solely on the basis of certified copies of Sale Certificate No. 734 in favor of Leoncio Alburo and Assignment of Sale Certificate No. 734 in favor of Tomas Alonso. These two documents on file with CENRO-Cebu were attached to the Solicitor General's Memorandum filed on May 25, 2001 – a fact expressly stated in the majority Decision. They were not submitted as evidence by the parties during the trial and are overcome by the Friar Lands Sale Certificate Register No. 734 (Exhibit "A"). The entries in this exhibit showing the existence of both the patent and the deed of final conveyance, belie the factual finding in question. Consequently, such erroneous finding unsubstantiated by any evidence cannot be the basis for invalidating the sale of Lot 727 to Tomas Alonso.

Similarly, the factual finding in the majority Decision that the final deed of conveyance was not approved by the Secretary of Agriculture as required by law, because the archive copy thereof does not bear such approval, is

contradicted by the factual finding of the Court of Appeals. It held that since the document, Exhibit "C", is a mere archive copy, not the original, "the Secretary's signature cannot be expected to appear thereon" and that the absence of the signature from the archive copy "does not necessarily mean the absence of the Secretary's approval as would invalidate the sale of Lot 727 to Tomas Alonso." [12] The rule that the factual findings of the Court of Appeals are binding on this Court [13] should have been applied by the majority since none of the exceptions to said rule [14] has been shown.

Tomas Alonso's ownership and possession lasted from the 1910's to the late 1930's. But no Transfer Certificate of Title appears to have been issued in his name. The majority Decision held that the final deed of sale "was not registered with the Registry of Deeds because of lack of technical requirements, among them, the approval of the deed of sale by the Secretary of Agriculture and Natural Resources, as required by law." [15] This finding, however, is contradicted by the express finding of the Court of Appeals that the said document "was submitted for registration, but for reasons undisclosed by the records, he was not issued a TCT." [16] This factual finding of the Appellate Court should prevail, there being no mention in the majority Decision of the presence of any of the circumstances warranting a review of the evidence. [17]

We now come to the issue of whether the reconstituted title in the name of the private respondent is valid. The majority Decision stated that the reconstitution of private respondent's title "was based on the owner's duplicate of title." This statement leaves much to be desired. The Court of Appeals finding that there is no record of the existence of either TCT No. 11351 or TCT No. 1021 covering Lot 727 [18] binds us, as held in numerous decisions. [19] Besides, as pointed out by petitioners, the absence of a technical description on the face of the reconstituted title is, by and in itself, incontrovertible proof that the reconstitution was not based on a genuine owner's duplicate. Indeed, if it were genuine, the owner's duplicate of the Certificate of Title that was used as source document in the administrative reconstitution would have contained a full technical description of Lot 727 D-2. And this would have found its way to the reconstituted title which merely mirrors its source document. [20]

It is not safe to conclude, as the majority does, that the core issues of fraud and lack of jurisdiction afflicting the reconstituted title have been "squarely resolved" or that each ground raised by petitioners in assailing the reconstituted title has been "answered."

On the issue of fraud, the majority Decision considered what petitioners correctly described as "minor badges of fraud", but conspicuously left out the weightier or major ones, such as: first, the illegal act of the Register of Deeds, memorialized by Exhibit "F", of returning to the private respondent the source documents supposedly used in the reconstitution of several titles in its name, instead of keeping them on file as part of the official record of such reconstitution; second, the conspicuous absence of a technical description of the property in the reconstituted title, giving rise to the presumption that the source document used, which the law requires to be an owner's (or mortgagee's, lessee's, or co-owner's) duplicate certificate of title and not any other, was a bogus or spurious certificate of title for otherwise, such technical description would have been there; third, while the certification in the reconstituted title reads: "This Original Certificate of Title has on this 26th day of July 1948 been administratively reconstituted, x x x" however, what emerged was a Transfer Certificate of Title. This patent discrepancy should not to be dismissed lightly. There are other major "badges of fraud" listed in petitioners' Memorandum dated April 18, 2001, but not one was squarely resolved. Such treatment of the issue of fraud hardly does justice to petitioners' cause.

In any case, the issue of want of jurisdiction which Justice Melo discussed incisively in his Dissent but the majority Decision failed to address, should carry the day for petitioners' cause. I adopt the following paragraphs from his Dissent:

"As regards the issue of nullity due to want of jurisdiction, it is essential to note the difference in law between

judicial and administrative reconstitution under Republic Act No. 26. The authority granted by said law to the Register of Deeds to make an administrative reconstitution of a lost or destroyed transfer certificate of title is limited by Sec. 5 to only two kinds of source documents: (a) the owner's duplicate of the certificate of title and (b) the co-owner's mortgagee's, or lessee's duplicate of the certificate of title. These two kinds are mentioned in pars. (a) and (b) of Sec. 3, Rep. Act No. 26. On the other hand, the power of a court to effect a judicial reconstitution of a lost or destroyed transfer certificate of title encompasses all the six (6) kinds of source documents enumerated by Sec. 3.

"The owner's duplicate of the certificate of title, if authentic, cannot be without a technical description of the covered lot in view of the provisions of Secs. 40, 41, and 42 of Act No. 496. The clear mandate of these provisions is that the technical description of the land as determined by the land registration court shall be inscribed upon the decree of registration which, in turn, shall be transcribed upon the original certificate of title and, in the event of a transfer, upon the transfer certificate of title. To make a sweeping pronouncement that the lack of a technical description in a reconstituted title is not a bar to reconstitution of the title is to be imprecise. It may be correct in the case of a judicial, but wrong in the case of an administrative reconstitution of a lost or destroyed transfer certificate of title.

"I am, therefore, convinced that the absence of the technical description from the face of the reconstituted title, TCT No. RT-1310(T-11351), unmistakably establishes the spuriousness of the 'missing' source document used in its administrative reconstitution x x x"

The authority of the Register of Deeds to administratively reconstitute a lost or destroyed title is expressly limited by Section 5 of Rep. Act No. 26 to the documents falling under Section 3 (a and b) – namely, either an owner's duplicate certificate of title or a mortgagee's, lessee's, or co-owner's duplicate certificate of title. Where the source document used is not any of these, it follows that the Register of Deeds has no authority to proceed with the administrative reconstitution of title. Obviously, a TCT purporting to have been issued in 1931, but having no technical description of the covered property as late as 1948, is spurious. It certainly does not qualify as a source document in an administrative reconstitution by the Register of Deeds. In fact, it cannot qualify even in a judicial reconstitution. Since the Register of Deeds has no jurisdiction to undertake the administrative reconstitution because the source document used did not fall under paragraphs (a) and (b), Section 3, of R.A. No. 26, respondent's title is a nullity.

Finally, petitioners' right of action is barred neither by prescription nor by laches. This action seeks a declaration of nullity of private respondent's reconstituted title on the ground, among others, of lack of jurisdiction. Such action does not prescribe.[21] As for laches, we must not lose sight of the basic postulate that it is a doctrine of equity which should never be used as a shield for fraud or wrongdoing by the very party responsible therefor.[22] The private respondent, operating under its previous name, was an active participant in the wrongful use and subsequent disappearance of the source document used in the reconstitution. Under such circumstances, private respondent cannot invoke laches to defeat petitioners' right to assail the validity of the reconstituted title because laches cannot be applied when manifest wrong or injustice will result.[23]

In any event, not all the essential elements of laches are present. In *Vergara vs. Vergara*,[24] we held that the second element of laches – namely, "delay in asserting plaintiff's rights, he having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit" – is absent where the plaintiff has no knowledge of the doing of the act complained of; hence, the delay in asserting such right, occasioned by such lack of knowledge, cannot give rise to the defense of laches. As pointed out by Justice Melo in his Dissent, this element is not present in the case at bar, because –

"x x x Neither Tomas Alonso nor his son, petitioner Francisco Alonso, knew about the fraudulent reconstitution of title effected by Cebu Country Club. Moreover, the requirement that plaintiff must have been

afforded an opportunity to file a suit, has not been met. It is clear from the record that the opportunity to file suit arose only upon the discovery of the official documents that unequivocally established the fact that Lot 727 had indeed been fully acquired by Tomas Alonso, and such discovery was what triggered the filing of the present suit. Before the documents were discovered the Alonsos were literally petrified by the dearth of evidence from filing suit. Their predicament of utter helplessness negates the applicability of laches. In the balancing of interest, we should go slow in punishing the victim of a fraud instead of penalizing the culprit, no matter how long the time lapse may have lasted.[25]

WHEREFORE, I vote (a) to grant petitioners' motion for reconsideration dated March 6, 2002; (b) to declare null and void TCT No. 1310 (T-11351) in the name of respondent Cebu Country Club, Inc., and order its cancellation; (c) to declare the petitioners as the lawful owners of Lot 727 of the Banilad Friar Lands Estate in Cebu City; and (d) to order the Register of Deeds of Cebu City to issue the corresponding new Certificate of Title in their names.

[1] Petitioners' motion for reconsideration at 3.

[2] G.R. No. 113095, February 8, 2000, 325 SCRA 11.

[3] G.R. No. 83383, May 6, 1991, 196 SCRA 630.

[4] *Macabingkil vs. Yatco*, G.R. No. L-23174, September 18, 1967, 21 SCRA 150; *Lopez vs. Director of Lands*, 47 Phil. 23, 32 (1924).

[5] 107 Phil. 520 (1960).

[6] *Bacalzo vs. Pacada*, *supra*; *Dela Torre vs. Court of Appeals*, *supra*.

[7] *Republic vs. Heirs of Felix Caballero*, G.R. No. L-27473, September 30, 1977, 79 SCRA 177; *Fabian vs. Fabian*, G.R. No. L-20449, January 29, 1968, 22 SCRA 231; *Alvarez vs. Espiritu*, G.R. No. L-18833, August 14, 1965, 14 SCRA 892; *Director of Lands vs. Rizal*, 87 Phil. 806 (1950).

[8] *Supra*.

[9] *Id.* at 16; see also *Pugeda vs. Trias*, G.R. No. L-16925, March 31, 1962, 4 SCRA 849; *Jovellanos vs. Court of Appeals*, G.R. No. 100728, June 6, 18, 1992, 210 SCRA 126.

[10] *Supra*.

[11] G.R. Nos. 102961-62, January 27, 2000, 323 SCRA 430.

[12] Court of Appeals Decision at 10.

[13] *Universal Motors vs. Court of Appeals*, G.R. No. 47432, January 27, 1992, 205 SCRA 448; *Arroyo, Jr. vs. Court of Appeals*, G.R. No. 96602, November 19, 1991, 203 SCRA 750; *Guiang vs. Samano*, G.R. No. 50501, April 22, 1991, 196 SCRA 114; *Bustamante vs. Court of Appeals*, G.R. No. 89880, February 6, 1991, 193 SCRA 603; *FNCB Finance vs. Estavillo*, G.R. No. 93394, December 20, 1990, 192 SCRA 514; *Ching Siu Yong vs. Intermediate Appellate Court*, G.R. No. 64398, November 6, 1990, 191 SCRA 187.

[14] *Orcino vs. Civil Service Commission*, G.R. No. 92869, November 18, 1990, 190 SCRA 815; *Robleza vs. Court of Appeals*, G.R. No. 80364, June 28, 1989, 174 SCRA 354; *Remalante vs. Tibe*, G.R. No. L-59514, February 25, 1988, 158 SCRA 138; *Sacay vs. Sandiganbayan*, G.R. Nos. L-66497-98, July 10, 1986, 142 SCRA 594.

[15] See Majority Decision at 3.

[16] See Court of Appeals Decision at 11.

[17] *Litonjua vs. Court of Appeals*, G.R. No. 120294, February 10, 1998, 286 SCRA 136; *Robleza vs. Court of Appeals*, supra; and *Remalante vs. Tibe*, supra.

[18] CA Decision at 17.

[19] *Universal Motors vs. Court of Appeals*, supra; *Arroyo, Jr. vs. Court of Appeals*, supra; *Guiang vs. Samano*, supra; *Bustamante vs. Court of Appeals*, supra; *FNCB Finance vs. Estavillo*, supra; and *Ching Siu Yong vs. Intermediate Appellate Court*, supra.

[20] *Anciano vs. Caballes*, 93 Phil. 875, 876 (1953), where it was ruled that "reconstitution of a certificate of title x x x denotes restoration of the instrument which is supposed to have been lost or destroyed in its original form and condition".

[21] *Ferrer vs. Bautista*, G.R. No. 46963, March 14, 1994, 231 SCRA 257; *Agne vs. Director of Lands*, G.R. Nos. 40399 & 72255, February 6, 1990, 181 SCRA 793.

[22] *Raneses vs. Intermediate Appellate Court*, G.R. No. 68747, July 13, 1990, 187 SCRA 397.

[23] *Santiago vs. Court of Appeals*, G.R. No. 103959, August 21, 1997, 278 SCRA 98.

[24] G.R. No. L-17524, May 18, 1962, 5 SCRA 53.

[25] 375 SCRA 390, 422-423 (2002).

DISSENTING OPINION

TINGA, J.:

A piece of land designated as Lot 727 of the Banilad Friar Lands Estate, Cebu City, on which part of the Cebu Country Club now stands, is the subject of the present controversy. For a finer appreciation of the issues, it may be helpful to recall the bare facts, as culled from this Court's Decision^[1] of January 31, 2002.

Petitioner's father, Tomas N. Alonso, after having been assigned the sales certificate over the subject lot by one Leoncio Alburo on December 18, 1919, completed the required payments thereon under Act No. 1120, also known as the Friar Lands Act. Thereafter, a sales patent was issued in Tomas Alonso's name on March 24, 1926, and a final deed of sale was executed in his favor by the Director of Lands on March 27, 1926. The deed of sale was not registered with the Register of Deeds, however, because of the lack of approval by the Secretary of Agriculture and Natural Resources (sic).^[2]

What happened in the interim is a matter of dispute but it is clear from the record that on July 26, 1948, United Service Country Club, Inc., the predecessor of respondent Cebu Country Club, Inc., managed to obtain an administratively reconstituted title, Transfer Certificate of Title (TCT) No. RT-1310 (T-11351),^[3] allegedly from the owner's duplicate certificate of title. Respondent has not explained how it or its predecessor acquired title to the property or how they attained possession thereof.

In 1983, this Court, in the case of *Heirs of Ramon Cabrera and Graciano Ingles v. Cebu Country Club, Inc.*,^[4] affirmed the Decision of the Court of Appeals, holding that Cebu Country Club, Inc. obtained its title to Lot 783, also of the Banilad Friar Lands Estate and covered by TCT No. RT-1313 (T-14139),^[5] through fraud. A Deed of Exchange executed in 1985 involving Lot 783 and part of Lot 727 between petitioners in said case and Cebu

Country Club, Inc. resulted in the partial cancellation of TCT No. RT-1310 (T-11351) and the subdivision of Lot 727.

Alleging that respondent also acquired the subject property through fraudulent means, petitioner on September 25, 1992 filed before the Regional Trial Court (RTC) of Cebu City a complaint against respondent for the declaration of nullity of title, the cancellation of certificates of title and recovery of the subject property. On May 7, 1993, the RTC rendered judgment in respondent's favor, which judgment was affirmed by the Court of Appeals. This Court, in its Decision of January 31, 2002, set aside the decision of the Court of Appeals, but –

IN LIEU THEREOF, we DISMISS the complaint and counterclaim of the parties in Civil Case No. CEB 12926 of the trial court. We declare that Lot No. 727 D-2 of the Banilad Friar Lands Estate covered by Original Certificate of Title Nos. 251, 232, and 253 legally belongs to the Government of the Philippines.[6]

As in every action for reconveyance,[7] the question posed by this case, is who between petitioner and respondent has a better right to the property.

This Court ruled that petitioner was not entitled to reconveyance because he failed to prove his imputations of fraud on the part of respondent by clear and convincing evidence.[8] That ruling, as this Court stated at the outset of the Decision ,rests on the postulate that the findings of facts of the Court of Appeals, particularly as to the validity of the reconstitution of respondent Cebu Country Club, Inc.'s title, is binding on this Court.[9]

I do not agree with that premise. Whether fraud attended the reconstitution of respondent's title calls for a conclusion drawn from facts and is, therefore, a question of law, not merely of fact.[10] And while this Court did address such issue, I submit that the conclusion that there was no fraud in the reconstitution of respondent's title is erroneous. The evidence of fraud in this case is, to me, clear and convincing.

The face of the reconstituted title alone exhibits badges of spuriousness.

On March 8, 1960, the Court of First Instance of Cebu ordered the change of the name of the registered owner from United Service Country Club, Inc. to that of respondent's. Then Section 18 of the old Corporation Law (Act No. 1459, as amended), then in effect, required that a copy of the Amended Articles of Incorporation changing respondent's name from "United Service Country Club, Inc." to "Cebu Country Club, Inc." be filed with the Securities & Exchange Commission (SEC). To effect a change of name in the certificate of title over a piece of land, the SEC certification of the amendment to the Articles of Incorporation should be presented in court, which shall then order the Register of Deeds to cause the change of name in the title. The court cannot directly order the change of the corporation name in the title without the SEC certification. The SEC certification, in the form of a memorandum, should appear not on the face of the title – which should remain untouched – but at the back thereof.

This procedure was not followed in the change of name of the owner registered in TCT No. RT-1310 (T-11351). The requisite SEC certification authorizing the change of name by respondent is not reflected at the back of the title; only the CFI Order appears thereat:

Entry No. 761-V-6-D.B. Order – By the Court of First Instance, Province of Cebu, ordering the Register of Deeds of Cebu to change the name United Service Country Club Inc., to "Cebu Country Club, Inc." and to insert the technical description of the parcel of land herein described. File No. RT-1310.

Date of the Instrument – March 3, 1960.

Date of the Inscription – March 8, 1960 at 10:16 A.M.

Instead, on the face of the title, the phrase "United Service" was merely crossed out and, in lieu thereof, the word "Cebu" was inserted. Thus:

IT IS HEREBY CERTIFIED THAT CERTAIN LAND SITUATED IN THE CITY OF CEBU, PHILIPPINES bounded and described as follows:

El terreno que se traspasa es el Lote No. 727 de la "Banilad Friar Lands Estate." Expediente No. 5988 del Tribunal del Registro de la Propiedad. (Exemption from the provisions of Article 567 of the Civil Code is specifically reserved) is registered in accordance with the provisions of the Land Registration Act in the name of UNITED SERVICE "CEBU COUNTRY CLUB (Incorporated), of Morga, Cebu, Cebu, P.I., ... [Emphasis supplied.]

I consider such irregular procedure as a telltale sign of spuriousness. Indeed, the same *modus operandi* was employed in the change of the registered owner's name in TCT No. RT-1313 (T-14139)[11] involved in the Cabrera-Ingles case. The change in names in both titles was effected on the same date at the same time.

Note, too, the denomination enclosed in parenthesis "(T-11351)" in "TCT No. RT-1310 (T-11351)." Circular No. 6 (RD-3),[12] issued by Enrique Altavas, Chief of the former General Land Registration Office, on August 5, 1946 provides in part:

TO ALL REGISTERS OF DEEDS:

In view of the change in the form of our government, all Registers of Deeds are hereby requested to number all certificates of title issued after the inauguration of the Republic of the Philippines, beginning with number one in consecutive order, in the following manner:

....

(c) In the case of transfer certificates of title, irrespective of their origin, the new numbers, which must start from number one shall be preceded by a dash and the letter T, e.g., T-1, T-2, T-3, etc. [Emphasis supplied.]

Clearly, only transfer certificates of title issued after the inauguration of the Republic in 1946 are required to be preceded by a dash and the letter "T." In the case of TCT No. T-11351, the impression is that it was issued after 1946. How then can respondent explain the notation at the bottom of the reconstituted title, stating:

Entered at CITY OF CEBU Philippines on the 19[th] day of November in the year nineteen hundred [sic] and thirty one at 9:00 a.m.[13] [Underscoring supplied.]

which it also capitalizes on?

GLRO Circular No. 6 (R.D.-3) dated August 5, 1946 is further clarified as regards the use of the dash in the numbering of the title by GLRO Circular No. 17[14] dated February 19, 1947, also issued by Enrique Altavas. The pertinent provisions of the latter Circular read:

- Reconstituted certificates of title shall be given new number in the following manner:

....

(c) In the case of transfer certificates of title, irrespective of their origin, the new numbers, which must be in consecutive order starting from number one, shall be preceded by a dash and the capital letters RT, and followed, in parenthesis, by the number, if known, of the respective lost or destroyed certificate of title, e.g., RT-1 (12837), RT-2 (6783), RT-3 (893), etc. (Emphasis supplied.)

Thus, for reconstituted titles, the letters "RT" and a dash should precede the new number. The old number, in turn, is enclosed in parentheses but is not preceded by a dash.

The foregoing observations stress the relevance of the findings of the Court of Appeals in the Cabrera-Ingles case. Wrote the appellate court:

We say that the appellee's reconstituted title bears on its face its own culpable nullity. The parent titles it cites are irrelevant and immaterial, if not fictitious, as such, and hence appellee's title coming from such a questionable, if not spurious or polluted source, cannot be a source of right. It is in the contemplation of the law, null and void ab initio and inexistent. . . .[15] [Emphasis supplied.]

This Court's decision in the Cabrera-Ingles case, moreover, provides compelling proof of fraud in the reconstitution of respondent's title. Generally, under the rule of *res inter alios*, evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or a similar thing at another time.[16] Nevertheless, such evidence may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, customs, usage and the like.[17] The Cabrera-Ingles case constitutes evidence proving intent, even a scheme, on the part of respondent to deprive the rightful owners of the lands on which its club once stood and still now stands. Both that case and the one at bar involve titles both administratively reconstituted by the same person, both issued on the same day (July 26, 1948), both supposedly based on an owner's duplicate certificate of title, and both bearing the same hallmarks of fraud.

Any presumption of good faith in favor of respondent has been overthrown by this Court's Resolution in the Cabrera-Ingles case, as well as by the undeniable indications of fraud appearing in the title itself. There being no more presumption in its favor, it was incumbent upon respondent to offer evidence of good faith on its part. It has offered none.

The owner's duplicate certificate of title, which was supposedly the basis for the reconstituted title, is nowhere to be found. Its purported loss does not help respondent's cause any. Worse, it gives rise to questions of jurisdiction on the part of the Register of Deeds to issue the reconstituted title. As Mr. Justice Melo, who participated in the decision of the Court of Appeals in Cabrera-Ingles, wrote in his penetrating dissent to this Court's Decision of January 31, 2002:

The issue of fraud rests on a number of facts and circumstances duly established by the evidence on record but simply ignored below. The first such circumstance is the total absence of proof of the due execution, existence, and contents of TCT No. 11351, the owner's duplicate which is supposed to be the source document used in the reconstitution. The same is true with regard to TCT No. 1021, which is supposed to be the parent title. The Court of Appeals admitted that there is no record of the existence of both documents. Assuming its innocent loss, then its contents should have been established by appropriate secondary evidence under Section 3, Rule 130, Revised Rules of Evidence. None was presented by private respondent. The net result is that the reconstituted title itself appears to be the only evidence available to prove its own existence, due execution, and contents.

In any case, I am convinced that the loss of the source documents is anything but innocent. The Cabrera-Ingles decision, made part of petitioner's evidence, sufficiently establishes the fraudulent character of their "disappearance" and the bogus nature of the reconstituted title. The handling of the source documents was not only irregular and improper but plainly illegal, being violative of the rule of irremovability of public records (Rule 132, Sec. 26, Revised Rules of Evidence) as well as constitutive of the crime of infidelity in the custody of official documents (Art. 226, par. 1, Revised Penal Code). The Register of Deeds and his subordinates had the duty of keeping safely in their vault all the documents used in the reconstitution, most especially the alleged owner's duplicate used as the sole basis for the administrative reconstitution. Instead of keeping that basic document safely, the Office of the Register of Deeds allowed its removal by giving it to the applicant! The act can only be viewed, in proper context, as part of a fraudulent conspiracy to conceal the spurious nature of the document.

....

Moreover, the genealogy of the reconstituted title is actually in limbo. The supposed parent title, TCT No

1021, has not been shown to be a transfer from the mother titles, OCTs No. 251, 252, and 253. And while private respondent alleged in its answer to the complaint below that it had acquired Lot No. 727 in good faith and for value, it failed to prove that it did so. Neither did it allege from whom it bought the property.

To my mind, the evidence of fraud is clear and convincing. The rule that factual findings of the Court of Appeals are binding upon this Court finds no application here, there being material facts and circumstances which, plainly, have been overlooked but which, when taken into account, will alter the result (*Morales vs. Court of Appeals*, 197 SCRA 391 [1991]).

As regards the issue of nullity due to want of jurisdiction, it is essential to note the difference in law between judicial and administrative reconstitution under Republic Act No. 26. The authority granted by said law to the Register of Deeds to make an administrative reconstitution of a lost or destroyed transfer certificate of title is limited by Section 5 to only two kinds of source documents: (a) the owner's duplicate of the certificate of title, and (b) the co-owner's, mortgagee's, or lessee's duplicate of the certificate of title. These two kinds are mentioned in paragraphs (a) and (b) of Section 3, Republic Act No. 26. On the other hand, the power of a court to effect a judicial reconstitution of a lost or destroyed transfer certificate of title encompasses all the six (6) kinds of source documents enumerated by Section 3.

The owner's duplicate of the certificate of title, if authentic, cannot be without a technical description of the covered lot, in view of the provisions of Sections 40, 41, and 42 of Act No. 496. The clear mandate of these provisions is that the technical description of the land as determined by the land registration court shall be inscribed upon the decree of registration, which in turn shall be transcribed upon the original certificate of title and, in the event of a transfer, upon the transfer certificate of title. To make a [sweeping] pronouncement that the lack of a technical description in a reconstituted title is not a bar to reconstitution of the title is to be imprecise. It may be correct in the case of a judicial, but wrong in the case of an administrative, reconstitution of a lost or destroyed transfer of certificate of title.

I am, therefore convinced that the absence of the technical description from the face of the reconstituted title, TCT No. RT-1310 (T-11351), unmistakably establishes the spuriousness of the "missing" source document used in its administrative reconstitution. The reason is simple: the source document itself also did not have it. Reconstitution denotes the restoration of a lost or destroyed certificate of title in its original form or condition. (*Zafra Vda. de Anciano vs. Caballes*, 93 Phil. 876). In other words, the reconstituted title merely reproduces the contents of the source document used; it mirrors the latter document. Indubitably, the source document used in the administrative reconstitution or private respondent's title was not a genuine owner's duplicate for lack of a technical description of the land. Consequently, the Register of Deeds had no authority at all to effect an administrative reconstitution of this particular title.[18]

Plainly, fraud attended the reconstitution of respondent's alleged title. Apparently, the majority shares this conclusion. For one, the Revised Draft Resolution denying the motions for reconsideration notes: "Surprisingly there is not even one evidence to show when and how its (respondent's) predecessor-in-interest, United Services Country Club, Inc., acquired the property from anybody." [19] For another, the same Revised Draft Resolution, following the Court's Decision, seeks to void the reconstituted title. On what ground can such a disposition be based other than a finding of fraud or want of jurisdiction?

I likewise agree with Justice Melo's disposition of the issues of prescription and laches. But more fundamentally, with the voiding of respondent's reconstituted title, it is puerile to even discuss respondent's defenses of prescription and laches in the first place.

In any event, respondent cannot successfully invoke the defense of extinctive prescription. Petitioner's complaint is not merely an action for reconveyance on the ground of fraud but also to declare void a reconstituted title for want of jurisdiction. The latter action does not prescribe.[20] Neither can respondent be deemed the owner of the

property by acquisitive prescription. As part of the Banilad Friar Lands Estate, the subject lot was covered by OCT Nos. 251, 252 and 253 of the Register of Deeds of Cebu.[21] A title once registered under the Torrens system cannot be defeated even by adverse, open and notorious possession; neither can it be defeated by prescription.[22] Laches, on the other hand, is a principle in equity.[23] One who invokes equity, it is often said, must do equity. Respondent, being guilty of fraud, cannot avail itself of the principle of laches. The question of prescription or laches cannot work to defeat justice or to perpetuate fraud and injustice.[24]

Significantly, the Resolution denying the motion for reconsideration echoes the points elucidated above. It posits, thus: "Neither may the rewards of prescription be successfully invoked by respondent, as it is an iron-clad dictum that prescription can never be against the Government . . . the public interests should (not) be prejudiced by the negligence of the officers or agents to whose care they are confided." [25]

Clearly, respondent is not entitled to the disputed property. Thus, I share this Court's conclusion in its Decision that respondent has not "been able to establish a clear title over the contested property," [26] as well as the Resolution's denouement that the reconstituted title which respondent solely banks on "by itself does not determine or resolve the ownership of the land covered by the lost or destroyed title." [27] It is to petitioner's cause that I now turn.

Without any doubt in my mind, petitioner has sufficiently established his ownership over the disputed property.

This Court held in its Decision that petitioner is not the owner of the disputed land because the sales patent issued in his name was not registered with the Register of Deeds. Such failure, in turn, was attributed to the absence of the signature of the Secretary of Agriculture and Natural Resources (sic) [28] in the deed of sale executed by the Director of Lands, thereby rendering the said deed void. [29] Authority for this conclusion is laid on the provisions of the Friar Lands Act, and amendments thereto, as well as on this Court's ruling in *Solid State Multi-Products Corporation v. Court of Appeals* [30]

Sec. 12 of Act No. 1120 provides in part:

"x x x the Chief of the Bureau of Public Lands shall give the said settler and occupant a certificate which shall set forth in detail that the Government has agreed to sell to such settler and occupant the amount of land so held by him at the price so fixed payable as provided in this Act at the Office of the Chief of the Bureau of Public Lands x x x and that upon the payment of the final installment together with all accrued interest the Government will convey to such settler and occupant the said land so held by him by proper instrument of conveyance, which shall be issued and become effective in the manner provided in section one hundred and twenty-two of the Land Registration Act."

Also, Sec. 18 of the same Act provides:

"No lease or sale made by the Chief of the Bureau of Public Lands under the provisions of this Act shall be valid until approved by the Secretary of the Interior." (Emphasis ours)

Similarly, Sec. 2 of C.A. No. 32, as amended by C.A. No. 316 provides in part:

"x x x. The persons, who, at the time of the subdivision survey are actual and bona fide occupants of any portion of the Friar Lands Estates, not exceeding ten hectares, shall be given preference to purchase the portion occupied at a private sale and at a price to be fixed in such case, by the Director of the Lands, subject to the approval of the Secretary of Agriculture and Commerce, after taking into consideration its location, quality, and any other circumstances as may affect its value, the provisions of section twelve of Act Numbered Eleven [H]undred and [T]wenty, as amended, to the contrary, x x x." (Emphasis ours)

It is clear from the forgoing provisions that the friar lands were purchased by the government for sale to actual

settlers and occupants at the time said lands are acquired by the government. The Bureau of Lands shall first issue a certificate stating therein that the government has agreed to sell the land to such settler or occupant. The latter then shall accept the certificate and agree to pay the purchase price so fixed and in the installments and at the interest specified in the certificate.

The conveyance executed in favor of a buyer or purchaser, or the so called certificate of sale, is a conveyance of the ownership of the property, subject only to the resolutory condition that the sale may be cancelled if the price agreed upon is not paid for in full. The purchaser becomes the owner upon the issuance of the certificate of sale in his favor subject only to the cancellation thereof in case the price agreed upon is not paid (*Pugeda vs. Trias*, No. L-16925, March 31, 1962, 4 SCRA 849.)

Upon payment of the final installment together with all accrued interests, the government shall then issue a final deed of conveyance in favor of the purchaser. However, the sale of such friar lands shall be valid only if approved by the Secretary of Agriculture and Commerce. In short, the approval by the Secretary of Agriculture and Commerce is indispensable for the validity of the sale.[31]

I hold, however, that the sales certificate in this case is not void, the absence of the Department Secretary's approval notwithstanding.

Section 18 of the Friar Lands Act does not explicitly declare void sales or leases entered into by the Chief of the Bureau of Public Lands without the approval of the Secretary of Interior, stating only that "(N)o lease of sale made by the Chief of the Bureau of Public Lands under the provisions of the Act shall be valid until approved by the Secretary of Interior." There is a difference between stating that the sale is void on one hand and stating that the sale is not valid on the other. Moreover, the injunction against validity is conditioned or even tempered by the key phrase "until approved." In other words, pending approval of the sale by the Department Secretary, title to the land is not formally conveyed to the purchaser. The latter is not deprived but, on the contrary, remains entitled to all the property rights. To be more precise, he acquires full ownership rights while the Government retains through the Department Secretary the function to execute the final deed of sale, which, however, becomes a mere formality upon full payment of the price.

Worthy of note here is that Tomas Alonso had mortgaged the land to the Government itself, represented by the Bureau of Lands, effective on July 30, 1915 and for a period of 12 months.[32] The Government's acceptance of the mortgage from Tomas Alonso indubitably shows its recognition of his ownership of the property.

What then is the significance of the signature of the Department Secretary? What is the rationale of the law in requiring his signature on the deed of sale? Section 18 should be correlated with Section 15, which establishes a reservation of title in favor of the Government pending full payment of the purchase price.

Applying the provisions of said Section 15, this Court ruled in *Director of Lands v. Rizal* [33] that although the Government reserves the bare and naked title to the land, the purchaser is deemed to be the actual owner thereof even before the payment of the full price and before the execution of the final deed of conveyance, the role or position of the Government being that of a mere lien holder or mortgagee. This principle has consistently been applied in subsequent cases.[34]

This kind of resolutory condition,[35] i.e., the non-payment of the purchase price, is imposed to guarantee complete payment of the agreed purchase price. Similarly, Section 18 requires the signature of the Secretary on the deed of sale to ensure verification of payment by no less than the Department Secretary before title is issued and full ownership conveyed to the purchaser. The absence of the Department Secretary's signature where payment of the purchase price has already been completed does not cancel or invalidate the transaction. Verily, the full payment of the purchase price constitutes the fulfillment of the condition. It is not disputed that Tomas

Alonso had effected full payment.[36]

I fail to see any compelling public policy that would call for a narrow construction of the law and warrant a nullification of the sale for lack of the requisite approval. On the contrary, the historical context of the Friar Lands Act and the provisions of the Act itself indicate that the law was intended to be applied liberally to favor ownership.

From the beginnings of Spanish colonization up to the establishment of American sovereignty, religious corporations had acquired large tracts of land in the Philippines, breeding feelings of unrest and agitation among Filipino tenants occupying those lands.[37] In order to avert any outbreak of violence, the Philippine Bill of 1902 authorized the Insular Government to exercise the power of eminent domain over lands which, on August 13, 1898, were owned or held by religious orders in such tracts or parcels or in such manner as in the opinion of the Philippine Commission injuriously affected the peace and welfare of the people.[38] Actual settlers at the time the lands were acquired by the Government were given preference over all others to lease, purchase or acquire their holdings within such reasonable time as may be determined by the Government.[39]

The intent behind the Friar Lands Act was to appease the restless Filipinos and to curtail and diminish the influence of the Catholic Church.[40] These, the law proposed to do, by unclenching the latter's grip over its vast holdings through the acquisition by the Government and the disposition thereof to their actual settlers.[41]

The provisions of the law reflect the intention to favor ownership over friar lands. Thus, Section 11 of the Act allows the occupant to purchase the land at actual cost. Section 13, moreover, limits leases to three years only.

Jurisprudence interpreting the provisions of Act No. 1120 has also hewed closely to this intent. Applying Section 16 of the law, which provides that, in the event of the death of a holder of a sales certificate prior to the execution of a deed by the Government, the widow shall be entitled to receive a deed of the land upon a showing that she has complied with the requirements of the law for the purchase of the same, this Court in *Jocson v. Soriano*[42] held that:

Act Nos. 1120 and 926 were patterned after the laws granting homestead rights and special privileges under the laws of the United States and the various states of the Union. The statutes of the United States as well as of the various states of the Union contain provisions for the granting and protection of homesteads. Their object is to provide a home for each citizen of the Government, where his family may shelter and live beyond the reach of financial misfortune, and to inculcate in individuals those feelings of independence which are essential to the maintenance of free institutions. Furthermore, the state itself is concerned that the citizens shall not be divested of a means of support, and reduced to pauperism. (*Cook and Burgwall vs. McChristian*, 4 Cal., 24; *Franklin vs. Coffee*, 70 Am. Dec., 292; *Richardson vs. Woodward*, 104 Fed. Rep., 873; 21. Cyc., 459)

The conservation of a family house is the purpose of homestead laws. The policy of the state is to foster families as the factors of society, and thus promote general welfare. The sentiment of patriotism and independence, the spirit of free citizenship, the feeling of interest in public affairs, are cultivated and fostered more readily when the citizen lives permanently in his own home, with a sense of its protection and durability. (*Waples on Homestead and Exemptions*, p. 3)

Under the statutory and constitutional provisions of the various states of the Union it has been held that "homestead privilege does not terminate on the husband's death but is transmitted to his widow and children." (21 Cyc., 562)[43]

It is in light of this intent that I maintain that the approval of the Department Secretary has been rendered moot by the acceptance of the Government of payments thereon because the objective of the law, which is the transfer of ownership, has been accomplished. Verily, the condition of the law for such transfer is the full payment of the

purchase price. Thus, in an analogous case^[44] involving Section 29 of Commonwealth Act No. 141 (the Public Land Act), which prohibits conveyances by the purchaser, this Court upheld such conveyance notwithstanding the lack of approval of the Secretary of Agriculture and Natural Resources, as required by law:

. . . . But such approval becomes unnecessary after the purchaser had complied with all the requirements of the law, even if the patent has not been actually issued, for in that case the rights of the purchaser are already deemed vested, the issuance of the patent being a mere ceremony. Thus, "the execution and delivery of the patent after the right to it has become complete, are the mere ministerial acts of the officers charged with that duty" (*Simmons vs. Wagner*, 101 U.S. 260). And, as it has been held, "One who had done everything which is necessary in order to entitle him to receive a patent for public land has, even before the patent is actually issued by the land department, a complete acquitable estate in the land which he can sell and convey, mortgage or lease. A fortiori a contract to convey land made before the issuance of a patent but after final proof had been made and the land paid for is not illegal" (38 C.J.S., section 228, p. 875).^[45]

The foregoing rationale should apply more forcefully in this case. Note that Section 29, C.A. No. 141 expressly declares "null and void" any conveyance without the requisite approval. Nevertheless, this Court stamped its imprimatur to such a transaction. What more in a case involving Section 18, Act No. 1120, which does not define the precise effect for a similar lack of approval?

Furthermore, it appears that the purpose of said Section 18 in requiring the Secretary's approval is merely to ensure that the price for the sale is adequate. While the initial authority to fix the price of the land was vested in the Chief of the Bureau of Public Lands, and later, in the Director of Lands, final approval was reposed upon the Secretary of Interior and, later, upon the Secretary of Agriculture and Commerce. Section 2, C.A. No. 32, as amended by C.A. No. 316, provides:

. . . . The persons, who, at the time of the subdivision survey are actual and bona fide occupants of any portion of the Friar Lands Estates, not exceeding ten hectares, shall be given preference to purchase the portion occupied at a private sale and at a price to be fixed in such case, by the Director of the Lands, subject to the approval of the Secretary of Agriculture and Commerce, after taking into consideration its location, quality, and any other circumstances as may affect its value, the provisions of section twelve of Act Numbered Eleven [H]undred and [T]wenty, as amended, to the contrary. ... [Emphasis supplied.]

While this provision does not appear in Section 18, Act No. 1120 but only in the amendatory laws, it is a confirmation of the original purpose of the law, which, to repeat, is to ensure the adequacy of the price of the land.

In the face of petitioner's clear right to the property, it is incumbent upon the Government, not the petitioner, to explain the absence of the Department Secretary's signature on the final deed of sale. The Government has not proffered any reason for such lack of approval. It does not claim that the absence of the Secretary's approval was due to inadequacy of the price, and the proposition that petitioner may have purchased friar lands beyond the limits set by the law^[46] is pure speculation. Be it noted that under Act No. 3024 which was the law in force at the time the area limit for the purchase of Friar Lands by an individual was 100 hectares. The subject property is 37 hectares only.

Neither has the Government produced the original of the final deed of sale. As the Court of Appeals pointed out, to which Mr. Justice Melo agreed in his Dissent, the Secretary's signature could not be expected to appear on the archive copy offered by petitioner in evidence.^[47] Under the circumstances, the unjustified withholding by the Department Secretary of his signature constitutes not merely an "arbitrary"^[48] exercise of power but an outright deprivation of property without due process of law.

That the sales patent issued in petitioner's name has not been registered is of little consequence. Registration, as this Court has repeatedly ruled, does not create or vest title but merely confirms title already created and

vested.[49] Thus, the failure to register did not negate petitioner's ownership over the subject property. In any case, petitioner having complied with all the requirements of the law, registration should issue as a matter of right.

The "important moiety" that supposedly distinguishes this case from Cabrera-Ingles, therefore, has been rendered irrelevant. In the Decision sought to be reconsidered, this Court referred to a "directive [by the Director of Lands] to the Register of Deeds to register the lot in question in favor of Graciano Ingles," which "superseded the administrative reconstitution, rendering allegations of fraud irrelevant." [50] Having performed all that is necessary, petitioner in this case is just as entitled to registration as the petitioners in Cabrera-Ingles.

Now, I address the Solid State[51] ruling and the obiter dictum in Liao v. Court of Appeals[52] on which the Decision and the Revised Draft Resolution are anchored.

Arrayed against Solid State and Liao are a significant number of cases involving Friar Lands, all handed down by a unanimous full[53] court, to wit:

Director of Lands v. Rizal,[54] per J. Montemayor:

. . . The equitable and beneficial title really went to the purchaser the moment he paid the first installment and was given a certificate of sale. The reservation of title in favor of the government is made merely to protect the interest of the government so as to preclude or prevent the purchaser from encumbering or disposing of the lot purchased before the payment in full of the purchase price.[55]

Bacalzo v. Pugeda,[56] per J. Gutierrez-David:

... It is not the issuance of the deed of conveyance that vests ownership in the purchaser under the Friar Lands Act "in the sale of friar lands under Act No. 1120, the purchaser, even before the payment of the full price and before the execution of the final deed of conveyance, is considered by law as the actual owner of the lot purchased under the obligation to pay in full the purchase price, the role or position of the Government being that of a mere lien holder or mortgagee." [57]

Pugeda v. Trias,[58] per J. Labrador:

A study of the above quoted provision clearly indicates that the conveyance executed in favor of a buyer or purchaser, or the so-called certificate of sale, is a conveyance of the ownership of the property, subject only to the resolutive condition that the sale may be cancelled if the price agreed upon is not paid for in full.[59]

Alvarez v. Espiritu,[60] per J. Regala:

The reservation of the title in favor of the government, which refers to the bare, naked title, is made merely for the protection of its interest so that the lot may not be disposed of by the purchaser before the price is paid in full. But outside of this protection, the government retains no right as an owner.[61]

Fabian v. Fabian,[62] per J. Castro.

De la Torre v. Court of Appeals,[63] per J. Ynares-Santiago.

FACTS: Following the issuance of the certificate of sale in 1938, full payment was made in 1944. But no final deed of conveyance was issued to the buyer who died in 1946. In 1979, after discovering that an uncle had wrongfully obtained a deed of conveyance from the Director of Lands and a transfer certificate of title over the land, the heirs of the buyer and their transferee brought suit for reconveyance and annulment of title. HELD: Under the Friar Lands Act, the certificate of sale is a conveyance of the ownership of the property, subject only to the resolutive condition that "the sale may be cancelled if the price agreed upon is not paid in full." This is unlike in the sale of public lands under the Public Lands Act where actual occupancy is required.

Thus, notwithstanding the absence of a final deed of conveyance and the lapse of 41 years, the rights of the

buyer's heirs were upheld.

In the case at bar, the Court of Appeals acknowledged the execution of a final deed of sale, duly approved by the Department Secretary, in favor of Tomas Alonso. Wrote the appellate court:[64]

However, the absence of the Secretary's signature in the Deed of Conveyance executed in favor of plaintiff's father (Exh. `C') does not necessarily mean the absence of the Secretary's approval as would invalidate the sale of Lot 727 to Tomas Alonso. As plaintiff explains, the copy of the Deed of Conveyance was merely a certified copy of the duplicate original existing in the Records Management and Archives Office of the Department of Education, Culture and Sports, Manila (Exh. `C-5'). Being merely an archive copy of the document, not the original, the Secretary's signature could not be expected to appear thereon. (Emphasis supplied.)

But, as noted before, the absence of a final deed of sale cannot nullify the ownership rights of Tomas Alonso. So too, even without such a final deed neither Solid State nor Liao can be invoked to defeat the rights of the petitioner as the heir of Tomas Alonso.

Involving conflicting claims to a Friar Lands lot, Solid State presented a choice between an administratively reconstituted title, backed neither by a sales certificate or a final deed of sale approved by the Department Secretary,[65] and a regularly issued title based on a deed of sale approved by the Department Secretary.[66] The choice for the Court was inexorable and it was made more so by its finding that the holder of the reconstituted title was a pretender as "no previous title to the same land existed." [67] Hence, the Court upheld the title which was sourced from the deed of sale duly approved by the Department Secretary.[68]

Liao, which was penned by Justice Pardo, who also penned the Decision in this case, is however different. Upon petition of Estrella Mapa, the RTC of Quezon City, acting as a land court, ordered the reconstitution of certain titles covering Friar Lands lots which were allegedly lost. It turned out that the reconstituted titles were in conflict with existing titles. This resulted in the filing of petitions[69] in the Court of Appeals for the annulment of the order of reconstitution against Mapa and her lot purchasers. It was followed by complaints before the RTC of Quezon City, seeking the quieting of title and an NBI investigation into the matter. In due time, the RTC branches concerned rendered their decisions, nullifying the reconstituted titles and titles derived therefrom.[70] On separate appeals interposed by Liao, who in the meantime purchased the lots from Mapa's buyers, the Court of Appeals through two Divisions[71] rendered decisions affirming the judgments of the Quezon City courts. The decisions of the Court of Appeals in turn were brought up to this Court. Meanwhile, the Court of Appeals granted the petition for annulment of judgment.[72] The decision was also elevated to this Court. After the consolidation of the petitions, this Court rendered the Liao decision.

The main issue raised before the Court of Appeals per the Montoya ponencia was whether the RTC, as a land court, had jurisdiction over the petition for reconstitution of title,[73] and in the other two cases whether a branch of the RTC could nullify the decision of another branch thereof.[74] Accordingly, the Court of Appeals resolved the cases mainly on said issues.[75]

When brought to this Court, the same principal issue was raised.[76] >Like in the Court of Appeals, the application of Section 18 of the Friar Lands Act was not brought up before this Court in any of the pleadings.[77] Neither was Solid State mentioned.[78]

The Court, however, decided the cases on the basis of Solid State.[79] But then Solid State was obviously misapplied. The ponencia[80] ratiocinated that the sales are void because they were approved by the Secretary of Interior, instead of the Secretary of Agriculture and Natural Resources as intimated in Solid State. But under the law in 1913 when the questioned sales certificates were issued, it was still the Secretary of Interior who could legally approve the deeds of sale.[81] Clearly, therefore, reference to Solid State was an erroneous obiter.

The Court could have very well decided the cases principally on the "double sale" rule to which it devoted three paragraphs in the Decision.[82]

Solid State is good law for the facts of that case. Only that much may be conceded. It should be applied only when there is a conflict between two titles covering the same Friar Land lot which emanated from different origins, one derived from a deed of sale approved by the Department Secretary and the other without such a basis. There, the choice is obvious.

On the other hand, Solid State should not be applied where the clashing rights originated from a common basis, as in this case, or none of the contending parties has come out with a final deed of sale duly approved by the Department Secretary. What should be applied are the precedents led by Bacalzo, Pugeda and Rizal. Of course, this also means that the Government cannot invoke Section 18 of the Friar Lands Act against a purchaser, especially one who has already made full payment I submit that this is the only sound conclusion. For, with its acceptance of full payment, the Government has irretrievably lost its rights to the property. Interestingly, the first position of the OSG based on the records of the Bureau of Lands was that "it can no longer be disputed that . . . Tomas Alonso had validly acquired the disputed Lot 527. "[83]

Consequently, I have to dispute this Court's disposition awarding the subject property to the Government,[84] which has already ceded its rights to the lot to petitioner's predecessor-in-interest.

For an action for reconveyance based on fraud to prosper, the party seeking reconveyance must prove by clear and convincing evidence his title to the property and the fact of fraud.[85] I find that petitioner in this case has met his burden, that he has established his entitlement to the subject property and that he has a better right thereto than respondent, and more so, the Government. Following the law and the precedents, petitioner is entitled to the ownership and possession of the subject property.

ACCORDINGLY, I vote to GRANT petitioner's motion for reconsideration.

[1] 375 SCRA 390 (2002).

[2] The Decision states that the failure to register was on account of the lack of approval of the Secretary of Agriculture and Natural Resources (Id., at 393-394). The prevailing law at the time of the execution of the final deed of sale on March 27, 1996 was Act No. 1120 dated April 26, 1904, Section 18 of which required the approval of the Secretary of Interior (not Agriculture and Natural Resources). Subsequently, Section 2 of Commonwealth Act No. 32 dated September 15, 1936, as amended by Commonwealth Act No. 316 dated June 9, 1938, transferred such function to the Secretary of Agriculture and Commerce (not Natural Resources). See *Solid State Multi-Products Corporation v. Court of Appeals*, *infra*.

[3] Exhibit D. Also Exhibit 5.

[4] G.R. No. 60392, August 29, 1983.

[5] Exhibit R. Also Exhibit 6.

[6] *Alonso v. Cebu Country Club*, Note 1, *supra*, at 410.

[7] See *De Ocampo v. Arlos*, G.R. No. 135527, October 19, 2000, 343 SCRA 716; *De la Cruz v. Court of Appeals*, G.R. No. 120652, February 11, 1998, 286 SCRA 230.

[8] *Id.*, at 402.

- [9] *Id.*, at 399.
- [10] *Dauan v. Secretary of Agriculture and Natural Resources*, 125 Phil. 639 (1967).
- [11] *Vide*, See Note 5, *supra*.
- [12] *Vide*, Decision in CA-G.R. No. 41918, p. 18.
- [13] *Id.*, at 19.
- [14] *Id.*, at 18-19.
- [15] *Vide*, Decision, CA-GR No. 65559, Exh. F.
- [16] RULES OF COURT, Rule 130, Sec. 34.
- [17] *Ibid*.
- [18] *Alonso v. Cebu Country Club, Inc.*, Note 1, *supra*, at 413-416.
- [19] Revised Draft Resolution, per J. Martinez, p. 8 (Word in parenthesis supplied).
- [20] *Id.*, at 422.
- [21] *Id.*, at 411.
- [22] *Omandam v. Court of Appeals*, G.R. No. 128750, 18 January 2001, 349 SCRA 483; *Cervantes v. Court of Appeals*, G.R. No. 118982, 19 February 2001, 352 SCRA 47; *Ong v. Court of Appeals*, G.R. No. 142056, 19 April 2001, 356 SCRA 768; *Heirs of Leopoldo Vencilao, Sr. v. Court of Appeals*, Phil. 815 (1998).
- [23] *Rosales v. Court of Appeals*, G.R. No. 137566, 28 February 2001, 353 SCRA 179.
- [24] *Cometa v. Court of Appeals*, G.R. No. 141855, 6 February 2001, 351 SCRA 294.
- [25] Resolution, per J. Martinez, p. 9 (Word in parenthesis supplied).
- [26] *Alonso v. Cebu Country Club, Inc.*, Note 1, *supra*, at 405.
- [27] Resolution, per J. Martinez, p. 9.
- [28] *Vide*, Note 2, *supra*.
- [29] *Id.*, at 403.
- [30] G.R. No. 83383, 6 May 1991, 196 SCRA 630.
- [31] *Id.*, at 639-640.
- [32] *Vide*, Exh. "A-7"; Records, p. 367, et seq.
- [33] 87 Phil. 806 (1950).
- [34] *Dela Torre v. Court of Appeals*, G.R. No. 113095, 8 February 2000, 325 SCRA 11; *Fabian v. Fabian*, 130 Phil. 214 (1968); *Alvarez v. Espiritu*, G.R. No. L-18833, 14 August 1965, 14 SCRA 892; *Pugeda v. Trias*, G.R. No. L-16925, 31 March 1962, 4 SCRA 849; *Bacalzo v. Pacada*, 107 Phil. 520 (1960).
- [35] *Ibid*.
- [36] *Vide*, Exh. "A-2"; Records, p. 367, et seq.

[37] A. Mañalac and R. Mañalac, *Land Registration* 3rd ed. 95.

[38] *Ibid.*

[39] *Ibid.*

[40] DePersio, Edward, S.S.C., *THE FRIAR LANDS QUESTION IN THE PHILIPPINES*, *World Mission Summer* 1960, Vol. II, No. 2. The author even quotes the following statement of then Governor General William Howard Taft: "On behalf of the Philippine Government it is proposed to buy the lands of the religious orders with the hope that the funds thus furnished may lead to their withdrawal from the Islands." The purchase of the Friar Lands, the division of the proceeds, the application of a large part thereof for the benefit of the Philippine Church, the establishment of the American hierarchy here, and the gradual withdrawal of the Spanish Friars, all will bring about what we so much desire — the Americanizing of the Roman Catholic Church in the Philippines, pp. 30, 31;" Escalante, Rene, *THE AMERICAN FRIAR LANDS POLICY: ITS FRAMERS, CONNTEXT, AND BENEFICIARIES, 1898-1916*, De La Salle University Press, Inc. "The primary reason for purchasing the friar lands was largely political. It was to get rid of a class that disturbed political stability. The Republican administration believed that the settlement of the friar lands issue would yield several benefits without necessarily incurring cash outlay. First, the sale of friar lands would free the friars from their attachments to the country. Once they had liquidated their assets in the Philippines, the Americans expected that the friars would leave the country. Second, the purchase of the friar lands and their subsequent sale to the tenants would bolster their propaganda that the Americans came to the Philippines to promote the welfare of the Filipinos. In the eyes of the Americans and Filipinos, the McKinley administration would appear benevolent and pro-Filipino. Third, the American leaders considered the settlement of the problems concerning the friar lands an inexpensive way to pacify the country. Financially, the settlement would not affect the Americans because the money would float. In short, the friar lands policy was an effective political instrument in quelling Filipino resistance to American rule." pp. 69-71.

[41] *Ibid.*

[42] 45 Phil. 375 (1923).

[43] *Id.*, at 378-379.

[44] *Juanico and Barredo v. American Land Commercial Co., Inc., et al.*, 97 Phil. 221 (1955), cited in *Tan v. Court of Appeals*, G.R. No. 80479, 28 July 1989, 175 SCRA 656, 665.

[45] *Id.*, at 227.

[46] *Separate Concurring Opinion*, Carpio, J., p. 5.

[47] Note 1, *supra*, at 417.

[48] *Separate Concurring Opinion*, Carpio, J., p. 4.

[49] *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 129471, 28 April 2000, 331 SCRA 267; *Garcia v. Court of Appeals*, 371 Phil. 107 (1999); *Lee Tek Sheng v. Court of Appeals*, 291 SCRA 544 (1998); *Heirs of Teodoro Dela Cruz v. Court of Appeals*, 358 Phil. 652.

[50] *Alonso v. Cebu Country*, Note 1, *supra*, at 407.

[51] Note 30, *supra*.

[52] G.R. Nos. 102961-62, 107625 & 108759, 323 SCRA 430 (2000).

[53] *Except Dela Torre v. Court of Appeals*, *supra*, which is a Division case.

[54] Note 33, *supra*.

[55] 87 Phil., at 810.

[56] Note 33, *supra*.

[57] 107 Phil., at 524-525.

[58] Note 33, *supra*.

[59] 4 SCRA, at 859.

[60] Note 33, *supra*.

[61] 14 SCRA, at 897-898.

[62] Note 33, *supra*.

[63] *Ibid*.

[64] See CA Decision, p. 10.

[65] 196 SCRA, at 641-642.

[66] *Ibid*, at 640-641.

[67] *Ibid*, at 643.

[68] *Ibid*.

[69] CA-G.R. Nos. 20381 & 22098.

[70] See Rollo, G.R. Nos. 107625 & 108759.

[71] First Division, composed of Justice Chua, as ponente, and Justices Cui and Rasul, concurring in the Decision promulgated in CA-G.R. SP No. 28422 on October 23, 1992; Rollo, G.R. No. 107625, pp. 31-34; Seventh Division, composed of Justice Austria-Martinez, as ponente, and Justices De Pano and Lapina, concurring, in Decision promulgated in CA GR-SP No. 28368 on February 4, 1993; Rollo, G.R. No. 108759, pp. 26-33.

[72] Decision in CA GR-SP Nos. 20381 & 22098 of Former Twelfth Division with Justice Montoya, as ponente, and Justices Purisima and Cacdac, concurring, promulgated on August 29, 1991; Rollo, G.R. Nos. 102961-62, pp. 349-350.

[73] Rollo, G.R. Nos. 102961-62, pp. 349-358.

[74] Rollo, G.R. No. 107625, pp. 31-34; Rollo, G.R. No. 108759, pp. 26-33.

[75] Notes 73 & 74, *supra*.

[76] Note 52, *supra*, at 442.

[77] *Ibid*.

[78] *Ibid*.

[79] *Ibid*.

[80] *Ibid*.

[81] Sec. 18, Act No. 1120.

[82] Note 52, *supra*, 443-444.

[83] OSG Comment dated 8 November 2000; Rollo, pp. 651-678, at 670.

[84] Note 1, at 424, *supra*.

[85] *Barrera v. Court of Appeals*, G.R. No. 123935, December 14, 2001, 372 SCRA 312; *Abejaron v. Nabasa*, G.R. No. 84837, June 20, 2001, 359 SCRA 47.

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