

**ROMAN CATHOLIC BISHOP OF KALIBO, AKLAN, REPRESENTED BY
BISHOP JUAN N. NILMAR, PETITIONER, VS. MUNICIPALITY OF
BURUANGA, AKLAN, REPRESENTED BY THE HON. PROTACIO S.
OBRIQUE, RESPO...***G.R. NO. 149145. March 31, 2006*

Ponente: CALLEJO, SR., J.

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Before the Court is the petition for review on certiorari filed by the Roman Catholic Bishop[1] of Kalibo, Aklan, seeking the partial review of the Decision[2] dated January 31, 2001 of the Court of Appeals in CA-G.R. CV No. 52626. Likewise sought to be reviewed is the Resolution dated July 18, 2001 of the appellate court denying the petitioner's motion for partial reconsideration.

Factual and Procedural Antecedents

Some time in 1990, the Roman Catholic Bishop of Kalibo, Aklan, filed with the Regional Trial Court (RTC) thereof a complaint for declaration of ownership and quieting of title to land with prayer for preliminary injunction against the Municipality of Buruanga, Aklan. The case was docketed as Civil Case No. 4164 and raffled to Branch 1 of the said RTC.

The complaint alleged, among others, that the Roman Catholic Bishop of Kalibo is the lawful owner and possessor of a parcel of residential and commercial land (Cadastral Lot No. 138) located at the poblacion of the Municipality of Buruanga, Aklan. The said lot, with an area of 9,545 square meters, is a block bounded by four streets on all sides. It is more particularly described as follows:

A parcel of commercial and residential land known as Cadastral Lot No. 138, GSS-06-00012, located at Poblacion, Buruanga, Aklan, containing an area of NINE THOUSAND FIVE HUNDRED FORTY- FIVE (9,545) SQUARE METERS, more or less. Bounded on the North by Viven Ostan Street; on the East by the Provincial Road; on the South by Nitoy Sualog Street; and on the West by Emilio Ostan Street, and declared for taxation purposes in the name of the Roman Catholic Church, Buruanga, Aklan, under Tax Declaration No. 6339 (1985) and assessed at P23,850.00, including the improvements thereon.[3]

In 1894, the Roman Catholic Church was built in the middle portion of the said lot and has been in existence since then up to the present.

The complaint further alleged that some time in 1978,[4] the Municipality of Buruanga constructed its municipal building on the northeastern portion of the subject lot after it obtained the permission of Fr. Jesus Patiño, then parish priest of Buruanga. The municipality promised to remove all the improvements it constructed thereon if and when the Roman Catholic Bishop of Kalibo needed the said land.

In October 1989, the said municipal building was razed by fire allegedly perpetrated by members of the New People's Army. On November 25, 1989, the Roman Catholic Bishop of Kalibo, through its counsel, wrote to the

Municipal Mayor of Buruanga requesting the officials of the said municipality to refrain from constructing its new building on the same site because it is the property of the church. Further, it needed the said land for its social action projects. The letter reads in part:

I am writing you on behalf of my client THE ROMAN CATHOLIC BISHOP OF KALIBO, AKLAN, a corporation sole and represented by Bishop Juan N. Nilmar requesting you and the Honorable Members of the Municipal Council (Sangguniang Bayan) to refrain from constructing your new Municipal Building on the same site where your old Municipal Building was burned down because it is constructed on the property of the Church.

Please be informed that the land of the Church is needed for its social action projects and additional building, hence, kindly relocate your New Municipal Building in your own land located along Emilio Ostan Street, known as Cadastral Lot No. 87.

With respect to your other public buildings such as the Rural Hospital, Buruanga Community Medicare Hospital, the Basketball Court and the Grandstand which are all occupying the Church property, you can continue using the same land subject to your recognition of the true ownership of the property of the Church — The Roman Catholic Church — of Buruanga, Aklan, under the Roman Catholic Bishop of Kalibo, Aklan, the lawful administrator of all church properties in the Province of Aklan.[5]

On March 12, 1990, the Roman Catholic Bishop of Kalibo wrote the Department of Public Works and Highways of the said province requesting the said office not to issue any building permit to the Municipal Mayor and/or the Municipality of Buruanga in connection with the construction of its municipal building on the land owned by the Roman Catholic Bishop of Kalibo.[6]

These letters went unheeded as the construction of the new municipal building on the same site proceeded. Consequently, the Roman Catholic Bishop of Kalibo filed the complaint a quo and prayed that it be declared the lawful owner and possessor of Lot 138. It likewise prayed that a temporary restraining order be issued to enjoin the said municipality and its authorized representatives from constructing the new municipal building thereon and that the latter be directed to pay damages to the Roman Catholic Bishop of Kalibo.

In its Answer,[7]the Municipality of Buruanga, represented by Mayor Protacio Obrique, denied that the Roman Catholic Bishop of Kalibo ever acquired ownership and possession over the land subject of the complaint. It raised as affirmative defenses that the said lot was surveyed as property of the municipality on February 3, 1909 in accordance with Section 58 of Act 926 by A.W. Bushell and approved by the Bureau of Lands on May 15, 1909.[8]Thereafter, a decree was issued on March 14, 1919 in favor of the Municipality of Buruanga under Case No. 12871 of then Court of Land Registration, Bureau of Lands.

It was further alleged that the said land was again surveyed in the name of the Municipality of Buruanga under Act No. 2259 and denominated as Lot No. 138 GSS-06-00012 from the approved cadastral map and that the said municipality alone had possessed the said land under the claim of title exclusively for over fifty (50) years, exclusive of all other rights and adverse to all other claimants.

The Municipality of Buruanga urged the court a quo to dismiss the complaint and, instead, declare it the absolute and exclusive owner of the disputed lot.

On November 29, 1990, the court a quo issued the Order[9] appointing Geodetic Engineer Rodrigo Santiago of the Bureau of Lands as Commissioner and directing him to identify and delineate the lot in question.

In compliance therewith, Engr. Santiago submitted the Commissioner's Report and Sketch stating in part:

That as per order of the court dated November 29, 1990 to delineate the land [in] question, the undersigned

court commissioner notified both parties and the schedule of survey was January 12, 1991 but it was postponed and moved to January 15 as requested by the representative from the Municipality of Buruanga.

That the land in question involved was pointed to me by the Honorable Mayor of the Municipality of Buruanga, identified on the plan as [L]ot 138 located at Poblacion Buruanga with survey no. GSS-06-00012 approved by the Director Lands last February 19, 1985, listed as Public Plaza on file in the CENR Office Land Management Sector, Kalibo, Aklan.

That the Honorable Mayor of the Municipality of Buruanga pointed also the boundary between the Public Plaza and the Roman Catholic Church.

The Technical Descriptions are as follows:

Lot 138-A (Public Plaza)

corner

1-2

S86

—

03E 65.54 m.

2-3 S03

—

17E 32.36 m

3-4

N88

—

54W 71.31 m

4-1

N06

—

33E 35.68 m.

containing an area of 2,319 square meters

Lot 138-B (Roman Catholic Church)

1-2

S86

—

03E 65.54 m.

2-3

S03

—

17E 32.36 m

3-4

N88

—

54W 71.31 m

4-1

N06

—

33E 35.68 m.

containing an area of 3,836 square meters

Lot 138-C (Public Plaza)

1-2

N81

—

19W 87.70 m.

2-3 N06

—

33E 38.90 m.

3-4

S83

—

17E 80.35 m.

4-1

S03

—

17E 42.57 m.

containing an area of 3,389 square meters[10]

Consistent with the above technical description, the sketch submitted by Engr. Santiago showed the delineation of Lot 138 into three parts: Lots 138-A, 138-B and 138-C. The municipal building stood on Lot 138-A; the Roman Catholic Church stood on Lot 138-B and the municipal health center and the Buruanga Community Medicare building stood on Lot 138-C. It also showed that portions of Lots 138-A and 138-C were being used as public plaza.

At the pre-trial, the parties stipulated on the following facts:

- The identity of the lot in question which is Lot 138 consisting of Lots 138-A, 138-B and 138-C as reflected in the commissioner's sketch with an area of 9,544 square meters and subdivided as follows:

- Lot 138-A 2,319 square meters

- Lot 138-B 3,836 square meters

- Lot 138-C 3,389 square meters

- Lot 138-B is the present site of the Roman Catholic Church of Buruanga.[11]

The parties also agreed that the sole issue for resolution is who between the Roman Catholic Bishop of Kalibo and the Municipality of Buruanga is the owner of Lot 138.

After due trial, the court a quo rendered its Decision dated October 30, 1995 declaring the Roman Catholic Bishop of Kalibo as the lawful owner and possessor of Lot 138-B and the Municipality of Buruanga as the lawful owner and possessor of Lots 138-A and 138-C, the said lots being public plaza for public use.

The court a quo found that of the various tax declarations[12] presented by the Roman Catholic Bishop of Kalibo to support its claim, only one referred to a portion of Lot 138. Said tax declaration[13] covered the church site and the parish house situated within Lot 138-B. The other pieces of evidence[14] could not be relied upon because they contained hearsay information relating to the disputed lot that occurred before the affiants were born. The affidavit executed by Fr. Jesus Patiño[15] stating that he was the one who gave verbal permission to then Municipal Mayor Pedro Omugtong to construct the municipal building on the vacant lot owned by the church was not accorded any evidentiary value because he (Fr. Patiño) did not testify during the trial.

On the other hand, the court a quo did not give credence to the Municipality of Buruanga's Exhibit "1," a microfilm enlargement of a plan showing that the land consisting of 12,615 square meters was subject of Land Registration Case No. 12871. The plan showed that the survey was approved on May 15, 1909 and the notations therein indicated that a decree was issued on March 14, 1919. But no such decree was shown. It was further found by the court a quo that the plan was requested from the Bureau of Lands Survey Division on December 22, 1976. However, the same was not duly certified by the issuing government agency. Even assuming that the disputed lot was indeed subject of a land registration proceeding and a decree had been issued therefor in March 1919, the Municipality of Buruanga, despite lapse of decades, failed to take the necessary judicial steps for the issuance of a title in its name based on the decree. Neither did it take any other course of action that would render its title thereto indefeasible.

The court a quo, however, gave probative weight to the testimony of Manuel Sualog, Chief of the Lands Management Section of the Department of Environment and National Resources, who was presented by the Municipality of Buruanga. Sualog testified that the disputed lot was the public plaza of the said municipality. Standing thereon are the Roman Catholic Church and its parish house, the new municipal hall, the rural health center, the barangay community hospital and a basketball court.

During the court a quo's ocular inspection conducted on May 7, 1992, the town was celebrating its town fiesta. It observed that the public was using the whole plaza (in Lots 138-A and 138-C) for the festivities. Also, the existence of the health centers, basketball court and the municipal hall showed that portions of the disputed lot were being used by the public.

Upon inspection of the church, the court a quo further observed that it was indeed an old stone structure and probably built in 1894, the year carved on its left side entrance. It described the church as "vintage turn-of-the century colonial Filipino church architecture. Moss and ficus grow out of its wall crevices. The age of the church shows that it has been occupying that particular space for almost one hundred (100) years long enough for the plaintiff to have possessed it in the concept of owner continuously, adversely and publicly against the whole world." [16]

The court a quo held that the facts of the present case were similar to those in *Harty v. Municipality of Victoria*, [17] where the Court ruled that:

For the above reasons, x x x it should be held, as we do hereby hold, that the whole of the land not occupied by the church of the town of Victoria and its parish house, is a public plaza of said town, of public use and that in consequence thereof, the defendant is absolved of the complaint without any special ruling as to the costs of both instances. [18]

The dispositive portion of the court a quo's decision reads:

WHEREFORE, judgment is hereby rendered as follows:

- The Roman Catholic Bishop of Kalibo, Aklan, is declared the lawful owner and possessor of Lot 138-B with an area of 3,836 square meters in the Commissioner's Report as against the defendant;
- Defendant Municipality of Buruanga is declared the lawful owner and possessor of Lot 138-A with an area of 2,319 square meters and Lot 138-C with an area of 3,389 square meters in the Commissioner's Report, said lots being public plaza destined for public use. [19]

The Roman Catholic Bishop of Kalibo seasonably filed its appeal with the Court of Appeals. It sought the reversal of that portion of the court a quo's judgment adjudicating the ownership of Lots 138-A and 138-C to the Municipality of Buruanga.

During the pendency of the case in the appellate court, the Roman Catholic Bishop of Kalibo moved to submit additional evidence to support its claim of ownership over the entire Lot 138. The additional evidence consisted of affidavits of old residents of Buruanga stating that the municipal building was constructed on the disputed lot only in the late 1950's. Prior thereto, the municipal building stood at a place called Sunset Park, a block totally different from the disputed lot. The said motion was denied by the appellate court on the ground that the Roman Catholic Bishop of Kalibo had already been accorded full opportunity to present its evidence in the court a quo.

The Municipality of Buruanga did not file its appellee's brief with the CA. On January 31, 2001, the appellate court rendered the assailed Decision affirming with modification the decision of the court a quo. The CA affirmed the ownership of the Roman Catholic Bishop of Kalibo over Lot 138-B but reversed the court a quo's ruling relative to the ownership of Lots 138-A and 138-C. The appellate court declared the said lots property of public

dominion, hence, not owned by either of the parties.

The CA stated that the court a quo correctly relied on the ruling in *Harty*, which was reiterated in *Bishop of Calbayog v. Director of Lands*,^[20] where the Court held that the public plaza and public thoroughfare were not subject to registration by the church. In the latter case, it was ruled that since neither the Church nor the municipality presented positive proof of ownership or exclusive possession for an appreciable period of time, and the only indubitable fact was the free and continuous use of the lot in question by the residents of the town, which had no other public plaza to speak of other than the disputed lot, there was a strong presumption that the same had been segregated as a public plaza upon the founding of the municipality therein.

As mentioned earlier, the appellate court reversed that portion of the court a quo's judgment declaring the Municipality of Buruanga as the owner of Lots 138-A and 138-C which form part of the public plaza. Citing Articles 419^[21] and 420^[22] of the Civil Code, the appellate court classified these lots as property of public dominion; hence, not susceptible to private ownership by the Municipality of Buruanga. The said lots are merely under its jurisdiction and administration. Being intended for the common and public welfare, they could not be appropriated either by the State or by private persons.

The dispositive portion of the assailed CA decision reads:

WHEREFORE, upon the premises, the appealed decision is AFFIRMED with the MODIFICATION that Lots 138-A and 138-C are declared property of public dominion not owned by either of the parties.^[23]

The Roman Catholic Bishop of Kalibo moved for a partial reconsideration of the appellate court's ruling that Lots 138-A and 138-C, being the public plaza, are property of public dominion. The Roman Catholic Bishop of Kalibo averred that the appellate court erred in affirming the finding of the court a quo that these lots comprise the public plaza. It maintained that it owned the entire Lot 138.

The appellate court denied the motion for partial reconsideration, hence, the recourse to this Court by the Roman Catholic Bishop of Kalibo (the petitioner).

The Petitioner's Arguments

The present petition for review on certiorari alleges that:

I. THE COURT OF APPEALS GRIEVOUSLY ERRED IN RELYING UPON THE CASES OF *HARTY V. MUNICIPALITY OF VICTORIA*, *TARLAC* (13 Phil. 152 [1909]) and *BISHOP OF CALBAYOG V. DIRECTOR OF LANDS* (45 SCRA 418 [1972]) TO SUPPORT ITS CONCLUSION THAT THE PETITIONER IS NOT THE OWNER OF LOTS 138-A AND 138-C.

II. THE COURT OF APPEALS GRIEVOUSLY ERRED IN FINDING THAT LOTS 138-A AND 138-C [WHICH ARE WITHIN THE ORIGINAL LOT 138] ARE PROPERTIES OF THE PUBLIC [DOMAIN] AND NOT SUSCEPTIBLE TO PRIVATE OWNERSHIP BY THE PETITIONER.

III. THE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT REFUSED TO RECOGNIZE THAT PETITIONER'S OWNERSHIP OF THE ENTIRE LOT 138 WAS GRANTED AND RECOGNIZED UNDER SPANISH LAW, AND AFFIRMED IN THE TREATY OF PARIS.^[24]

The petitioner clarifies that it is seeking a partial review of the appellate court's Decision dated January 31, 2001 classifying Lots 138-A and 138-C as property of public dominion and not susceptible to private ownership and that the petitioner is not entitled to the possession and ownership thereof. It is not contesting the portion of the CA decision upholding its ownership over Lot 138-B.

The petitioner opines that the case of *Harty*, relied upon by the court a quo and the CA to hold that Lots 138-A

and 138-C comprise the public plaza, are inapplicable because the facts therein are not similar to those of the present case. The petitioner points out that the public plaza referred to in Harty was the lot across the street from the church lot. It was not referring to the land surrounding the Catholic church and the convent of the town of Victoria, which was bounded by streets on each of its four sides. Thus, when the Court in Harty limited the ownership of the church to the land "occupied by the church of the town of Victoria and its parish house," it was not confining the ownership to a portion of the lot on which the church and parish house were situated. Rather, the Court in Harty referred to the entire lot or block (bounded by a street on each of the four sides) on which the church and its parish house were erected.

The petitioner asserts that the following facts that have been established support its claim of ownership over the entire Lot 138 as against the claim of the Municipality of Buruanga (respondent municipality):

[a] The church is built in the middle of Lot 138 (which is now Lot 138-B). It was built therein in 1894. The church was almost 100 years old (at the time the case was instituted with the trial court in 1990). x x x

[b] The Municipality of Buruanga is an old municipality constituted or created during the colonial period, when the Philippine Islands was under the Spanish sovereignty. x x x

[c] No building was built on Lot 138 earlier than or at about the same time as the church. No municipal building was built around the church for many decades after 1894. x x x

[d] The municipal hall of Buruanga was built on what is now Lot 138-A only in the late 1950's. x x x

[e] It was not controverted by the private respondent that then Mayor Omugtong of Buruanga sought and obtained the permission of the then parish priest, Fr. Jesus Patino, to allow the municipal government to build its municipal hall on Lot 138-A in the late 1950's only. x x x

[f] No evidence was adduced by private respondent that it had obtained title of Lot 138-A or 138-C from the church (the owner of these lots) or that its possession of any portion of Lot 138 was adverse to that of the church. x x x

[g] When the municipal hall was burned down by the NPA rebels in 1989 the church asked the municipal government to relocate the municipal hall elsewhere since it (church) needed the lot for itself.

[h] Because the municipal government resisted and for the first time exhibited a possession adverse to the church, the petitioner promptly filed the instant suit before the lower court for quieting of title to the subject lot (the entire Lot 138) and to be declared the owner of such property.

[i] The church has been in continuous, open, adverse, notorious possession of the entire Lot 138 in the concept of owner since at least 1894 until the late 1950's. x x x

[j] No evidence has been shown that Lots 138-A and 138-C were devoted for public use or for use as a public plaza before 1894 or even at about the time the church was built on Lot 138. x x x

[k] The only evidence as to the supposed character of Lot 138-C as a public plaza is a survey plan allegedly approved on 15 May 1909 denominated as [GSS]-06-00012, Buruanga Settlement Project, approved only in 1984. Petitioner was not notified of this survey. x x x

[l] The real property tax declaration presented by private respondent to establish its supposed possession (Exhs. 4, 4-a, and 4-b, Record, pages 45-47) covered the year 1992 only.

[m] Witness Jaime S. Prado, Sr. (who was born on 17 December 1905 and coming to the age of reason when he was about 10 years old) testified that as far as he can remember (since he was grade 1) he was brought to mass by his elders at the church of Buruanga, which was the very same church as of the time he testified in

1992, and was active in church activities in that church (e.g., tsn, 9 January 1992, pages 5, 16); that the property of the church was bounded on all four sides by the very same streets that bounded it at the time he testified (ibid., at page 6-8).

[n] Private respondent indirectly judicially admitted that it has no title (Torrens or otherwise) to the subject properties when its star witness (the incumbent Mayor Protacio Obrique of Buruanga) testified that the properties in the poblacion of Buruanga are not covered by any title (tsn, 27 July 1992, page 5).[25]

The petitioner contends that the pronouncement in Bishop of Calbayog, cited by the appellate court, does not support its decision. Instead, it actually supports the petitioner's claim of ownership over Lot 138, including Lots 138-A and 138-C. In the said case, the lot (Lot 2) that was declared by the Court as plaza was a separate and distinct lot separated from the church lot (Lot 1) by a provincial road. Lot 1, held to be owned by the church in the said case, included not only the space occupied by the church, belfry, convent, parish school and nuns' residence, but also the empty space which only had concrete benches as improvements thereon and which was used as a public playground.

The petitioner also cites Roman Catholic Bishop of Jaro v. Director of Lands,[26] where the Court recognized that under the Laws of the Indies (Leyes de las Indias), the law in force in the Philippine Islands during the Spanish regime, the property of the church in the pueblos consisted of one parcel of land which meant "not only the two buildings but also the land adjacent and contiguous to said buildings, that is, the parcel which by itself constitutes one whole piece of land bounded on its four sides by streets, and within which said buildings, the church and the convent, are situated." [27]

According to the petitioner, the appellate court erred in affirming the finding of the court a quo that Lots 138-A and 138-C comprise the public plaza. Unlike in Harty, no evidence was allegedly adduced to show that from the time respondent municipality was created these two lots had been set aside for the public.

Harty is not applicable, the petitioner expounds, because it was indubitably established therein that the "plaza was used without let or hindrance by the public and the residents of Victoria ever since its creation." In contrast, in the present case, there was allegedly no evidence to show that Lots 138-A and 138-C were set aside as the public plaza, or for any public purpose, when the Municipality of Buruanga was created during the Spanish period. The evidence, in fact, show that the entire Lot 138, bounded on all its four sides by streets, belonged to the church and it had continuous use and occupation thereof since 1894 when it constructed its church in the middle of Lot 138. No such use of Lot 138-A and 138-C as the public plaza for the same length of time or from 1894 had been shown.

The petitioner assails the reliance by the appellate court on the court a quo's statement during its ocular inspection on Lot 138 in 1992 that it observed that the property was occupied by the Roman Catholic Church, a parish house, the municipal hall and three of its municipal edifices, and a basketball court. Based on this observation, the court a quo concluded, and the appellate court affirmed, that Lots 138-A and 138-C comprise the public plaza. The petitioner objects to this conclusion stating that the same cannot overcome the evidence in favor of the church as to its ownership over these lots traced back to 1894 when it constructed the church in the middle of Lot 138 or what is now Lot 138-B.

It reiterates that under the Laws of the Indies, when a municipality was created, the church was assigned a property consisting of a parcel of land bounded on all its four sides by streets, and that the public plaza was situated not on the same parcel of land assigned to the church but on a distinct lot separated by a street from that assigned to the church.

The petitioner likewise argues that even if it, as the owner of the entire Lot 138, allowed respondent municipality

to build its municipal hall on what is now Lot 138-A in the late 1950's by mere tolerance of the parish priest, it does not necessarily follow that Lot 138-A had become property of public dominion. It does not allegedly lose its possession or ownership over the property if the possession or use by another of the same is by mere tolerance.

Respondent municipality, through its Mayor Protacio Obrique during his testimony, allegedly admitted that respondent municipality's lot was located in a portion designated as Lot 2 in its Exhibit "1." The said lot was along the beach and separated from Lot 138 by Emilio Ostan Street. The alleged import of this admission is that the entire Lot 138 (designated as Lot 1 in Exhibit "1") was assigned solely to the church since a different lot was assigned to respondent municipality.

The petitioner avers that Buruanga is an ancient Spanish town and that when it was created the Spanish authorities assigned a distinct and separate lot for its municipal government or pueblo where it could build its municipal hall or casa real. It could thus be assumed that the casa real of respondent municipality would be built at about the same time as the church or around 1894. The petitioner contends that nothing in the evidence suggests that the casa real was built on Lot 138 during the said period. It was only in the late 1950's that the municipal hall was built thereon upon the permission granted by the parish priest.

Refuting respondent municipality's view that it is unthinkable that the church would be given a bigger property than the municipal government, the petitioner submits that such notion is not far fetched considering that the primary aim of the Spaniards at the time was to spread the Catholic faith to the colonies.

That the entire Lot 138 belonged to the petitioner is allegedly supported by the practice during the Spanish period, as shown by the layout of the church convent and church plaza in practically all the old towns in the Philippines and the early cases[28] decided by the Court, to invariably provide the church with spacious grounds bounded by the four principal streets of the town.

Even without any document or certificate of title thereto, the petitioner bases its claim of ownership over Lot 138 under the Spanish Law as recognized and affirmed under the Treaty of Paris. It cites *Roman Catholic Apostolic Church v. Municipality of Placer*[29] where the Court recognized that the church is entitled not only to possession of its properties but to ownership thereof. Bishop of Jaro was again invoked by the petitioner as the Court explained therein that it did not find it strange that the church was unable to exhibit a written title to its property since the Laws of the Indies in force during the Spanish regime dictated the layout of the towns and assigned the locations of the church, square and government administration buildings. The provisions of the Laws of the Indies pertaining thereto were held to be sufficient to secure the registration in the name of the church of its land.

The petitioner asserts that even granting *arguendo* that Lot 138 was not assigned to it during the Spanish regime or is not owned by it pursuant to the Laws of the Indies, still, it had acquired *ipso jure* or by operation of law a government grant, a vested title, to the disputed lot by virtue of its open, continuous, exclusive and notorious possession and occupation thereof since 1894. In support of this contention, the petitioner cites Subsection 6 of Section 54 of Act No. 926, which became effective on July 26, 1904, and which provided that:

6. All persons who by themselves or their predecessors in interest have been in the open, continuous, exclusive and notorious possession and occupation of agricultural public lands, as defined by said Act of Congress of July first, nineteen hundred and two, under a bona fide claim of ownership except as against the Government, for a period of ten years next preceding the taking effect of this Act, except when prevented by war or force majeure, shall be conclusively presumed to have performed all the conditions essential to a government grant and to have received the same, and shall be entitled to a certificate of title to such land under the provisions of this chapter.

It is allegedly clear that as early as July 26, 1904, when Act No. 926 took effect, the petitioner had already

acquired a government grant, a vested title, to Lot 138.

Subsection b of Section 45 of Act No. 2874, approved on November 9, 1919, which amended Act No. 926, is similarly cited by the petitioner. It provided that:

(b) Those who by themselves or their predecessors in interest have been in the open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, except as against the Government, since July twenty-sixth, eighteen hundred and ninety-four, except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title under the provisions of this chapter.

On the basis of the foregoing provisions, a land registration proceeding instituted would, according to the petitioner, "in truth be little more than a formality, at the most limited to ascertaining whether the possession claimed is of the required character and length of time, and registration thereunder would not confer title, but simply recognize a title already vested."

In addition to its arguments on the merits of the case, the petitioner assails the appellate court's denial of its motion to submit additional evidence which would have showed that the casa real of respondent municipality, together with its plaza (Sunset Park Plaza), was located on a distinct lot (Lot 2) separated from Lot 138 by Emilio Ostan Street.

The petitioner urges the Court to reverse and set aside the portion of the appellate court's decision declaring Lots 138-A and 138-C as property of public dominion and to declare the petitioner the absolute owner of the entire Lot 138. In the alternative, the petitioner prays that it be allowed to submit additional evidence of its ownership over Lots 138-A and 138-C.

Respondent Municipality's Counter-arguments

For its part, respondent municipality contends that, except for the figures 1894 etched on the left wall of the church, the petitioner has not presented any evidence to show that it had continuous possession of the entire Lot 138 since the turn of the twentieth century. The petitioner is allegedly of the mistaken belief that because it possessed Lot 138-B, it must have likewise possessed Lots 138-A and 138-C. Respondent municipality claims that it is the one that has been exercising acts of exclusive ownership over the disputed lot.

The petitioner has allegedly misread Harty and Bishop of Calbayog in claiming that in cases involving the church, the lot adjudicated to it invariably consisted of the entire block, bounded by a street on each of the four sides, and the public plazas were situated in separate blocks. While it may be true that many church properties occupy an entire block in certain municipalities, it is allegedly equally true that other church properties occupy only portions thereof depending on the exigencies of the locality at the time when the church was being established.

In those instances that the Court allegedly adjudicated an open space in favor of the church, the local government was not shown to have exercised dominion over the property and the church has consistently established some control over it, like the putting up of a religious monument thereon. On the other hand, in the present case, respondent municipality insists that it has laid adverse claim over Lot 138 as early as 1909 when it applied for title over it and was even issued a decree over the said lot. Respondent municipality places its actual, public and adverse possession of Lot 138 at the latest in 1958 when it built its old municipal hall on the said site. Its occupation prior thereto could also be allegedly presumed from its actual possession thereof.

The petitioner has allegedly failed to establish that the construction of the old municipal building in 1958 was by mere tolerance on its part. Respondent municipality harps on the failure of the petitioner to present as its witness

Fr. Patiño, the parish priest who supposedly gave respondent municipality permission to construct its municipal building on the disputed lot. Respondent municipality denies ever seeking such permission. Further, the tax declaration (Exhibit "B") of the petitioner only pertained to Lot 138-B proving that its ownership was limited to the said lot and did not extend to Lots 138-A and 138-C.

Respondent municipality avers that it is already contented with the decision of the appellate court although the latter allegedly erred in concluding that Lots 138-A and 138-C are property of public dominion without taking into consideration that respondent municipality applied for the issuance of title covering the disputed lot and was issued a decree thereto in 1919. The admission of Mayor Obrique, during his testimony, that respondent municipality owned the lot along the beach (Lot 2) and situated across the street from Lot 138 could not be allegedly taken to mean that the Mayor was disclaiming ownership over Lot 138.

Respondent municipality theorizes that in those cases^[30] that the Court upheld the ownership of the church over a subject property, the same have ever since remained the property of the church and have been in its peaceful possession. Further, there were no adverse claimants and the primary issue being resolved was whether, despite non-compliance with procedural requirements, title may be granted in favor of the church.

Respondent municipality distinguishes the present case from those cases in that there is an open contest over the ownership and possession of Lots 138-A and 138-C and respondent municipality has in its favor actual and adverse possession thereof. It emphasizes that there is nothing in fact and in law that would support the petitioner's bare claim of ownership and possession over Lots 138-A and 138-C. On the contrary, there is allegedly strong evidence showing respondent municipality's exercise of proprietary and governmental rights over the said lots where it has constructed permanent structures, e.g., municipal building, community hospital, health center, social hall/basketball court, and where public functions are openly conducted.

Respondent municipality urges the Court to dismiss the petition and, instead, to affirm the decision of the court a quo declaring it the lawful owner and possessor of Lots 138-A and 138-C.

Issue

The substantive issue to be resolved is whether the appellate court correctly declared Lots 138-A and 138-C as property of public dominion, hence, not susceptible to ownership by either the petitioner and respondent municipality.

Since respondent municipality no longer sought the review of the assailed decision of the appellate court, the Court shall mainly resolve the merits of the petitioner's claim of ownership over Lots 138-A and 138-C vis-à-vis the appellate court's holding that they are of public dominion, hence, not susceptible to private ownership.

The Court's Ruling

The petition is denied.

The Laws of the Indies and the cases cited by the petitioner do not support its claim of ownership over Lots 138-A and 138-C.

The petitioner anchors its claim of ownership over Lots 138-A and 138-C on its theory that the entire Lot 138, bounded on all its four sides by streets, was assigned to it as far back as 1894 when the church was built in the middle of the said lot. The cases it cited allegedly stand for the proposition that "under the Laws of the Indies, when a municipality was created, the church was assigned a property consisting of a parcel of land bounded on all its (four) sides by streets, and that the public plaza was situated not on the same parcel of land assigned to the church but on a distinct parcel of land separated from the parcel of land assigned to the church by a street."^[31]

This allegation fails to persuade. The pertinent provision of the Laws of the Indies relating to the designation of a parcel of land for the church upon the establishment of a town or pueblo during the Spanish regime reads:

Ley viij. Que se fabriquen el Templo principal en el sitio, y disposicion, que se ordena, y otras Iglesias, y Monasterios. En lugares Mediterráneos no se fabrique el Templo en la plaza, sino algo distante de ella, donde esté separado de otro qualquier edificio, que no pertenezca á su comodidad y ordenato, y porque de todas partes sea visto, y mejor venerado, esté algo levantado de suelo, de forma que se haya de entrar por gradas, y entre la plaza mayor, y Templo se edifiquen las Casas Reales, Cabildo, ó Concejo, Aduana, y Atarazana, en tal distancia, que autoricen al Templo, y no le embaracen, y en caso de necesidad se puedan socorrer, y si la poblacion fuere en Costa, dispóngase de forma que en saliendo de Mar sea visto, y su fábrica como defensa del Puerto, señalando solares cerca de él, y no á su continuacion, en que se fabriquen Casas Reales, y tiendas en la plaza para propios, imponiendo algun moderado tributo en las mercaderías: y asimismo sitios en otras plazas menores para Iglesias Parroquiales, y Monasterios donde sean convenientes.[32]

The above provision prescribed that the church be built at some distance from the square, separate from other buildings in order that it may be better seen and venerated, and raised from the ground with steps leading to it. It decreed that government administration buildings, including casas reales, be built between the main square and the church and at such distance as not to shut the church from view. In cases of coastal towns, the church was to be constructed in such location as to be seen by those coming from the sea and serve for the defense of the port.

The other provisions of the Laws of the Indies on the establishment of new towns or pueblos in the archipelago, including the designation of lands for the church, casa reales (municipal buildings) and public squares, had been discussed by the Court in this wise:

x x x

The executive authorities and other officials who then represented the Spanish Government in these Islands were obliged to adjust their procedure, in the fulfillment of their duties with regard to the establishment and laying out of new towns, to the Laws of the Indies, which determined the course that they were to pursue for such purposes, as may be seen by the following:

Law 6, title 5, book 4, of the Recompilation of the Laws of the Indies, provides, among other things:

"That within the boundaries which may be assigned to it, there must be at least thirty residents, and each one of them must have a house," etc.

Law 7 of the same title and book contains this provision:

"Whoever wishes to undertake to establish a new town in the manner provided for, of not more than thirty nor less than ten residents, shall be granted the time and territory necessary for the purpose and under the same conditions."

It may be affirmed that years afterwards all the modern pueblos of the Archipelago were formed by taking as a basis for their establishment the barrios already populated by a large number of residents who, under the agreement to build the church of the new pueblo, the court-house and afterwards the schoolhouse, obtained from the General Government the administrative separation of their barrio from the pueblo on which it depended and in whose territory it was previously comprised. In such cases procedure analogous to that prescribed by the Laws of the Indies was observed.

For the establishment, then, of new pueblos, the administrative authority of the province, in representation of the Governor-General, designated the territory for their location and extension and the metes and bounds of the same; and before the allotting the lands among the new settlers, a special demarcation was made of the places which were to serve as the public square of the pueblo, for the erection of the church, and as sites for the public buildings, among others, the municipal building or the casa real, as well as of the lands which were to

constitute the commons, pastures, and propios of the municipality and the streets and roads which were to intersect the new town were laid out, as may be seen by the following laws:

Law 7, title 7, book 4, of the Recompilation of the Laws of the Indies, provides:

"The district or territory to be given for settlement by composition shall be allotted in the following manner: There shall first be set apart the portion required for the lots of the pueblo, the exido or public lands, and pastures amply sufficient for the stock which the residents may have, and as much more as propios del lugar or common lands of the locality; the rest of the territory and district shall be divided into four parts — one of them, of his choice, shall be for him who takes upon himself the obligation to found the pueblo, and the other three shall be apportioned equally among the settlers."

Law 8, of the same title and book, prescribes, among other things:

"That, between the main square and the church, there shall be constructed the casas reales or municipal buildings, the cabildo, concejo, customs buildings," etc.

Law 14 of the said title and book, also directs among other things:

"That the viceroys shall have set aside such lands as to them appear suitable as the common lands (propios) of the pueblos that have none, therewith to assist in the payment of the salaries of the corregidores, and sufficient public lands (exidos) and pasture lands as provided for and prescribed by law."

Law 1, title 13 of the aforesaid book, provides the following:

"Such viceroys and governors as have due authority shall designate to each villa and lugar newly founded and settled the lands and lots which they may need and may be given to them, without detriment to a third party, as propios, and a statement shall be sent to us of what was designated and given to each, in order that we may have such action approved." [33]

Nowhere in the above provisions was it stated that the parcel of land designated for the church of the town or pueblo was, in all cases, to be an entire block or bounded on all its four sides by streets. The petitioner thus erroneously asseverates that the said ancient laws sustain its claim of ownership over the entire Lot 138.

Neither can it find support in the cases that it cited. A careful review of these cases reveal that, in those instances where the Court upheld the claim of the church over a parcel of land vis-à-vis that of the municipality or national government, the ownership and possession by the church of the same had been indubitably established by its exclusive exercise thereon of proprietary acts or acts of dominion.

For example, in *Bishop of Calbayog v. Director of Lands*, [34] which according to the petitioner supports its case, the Court adjudicated in favor of the church the ownership of Lot 1 (except the portion thereof occupied by a public thoroughfare) including not only the space occupied by the church, belfry, convent, parish school and nuns' residence, but also the empty space which only had concrete benches as improvements thereon.

With respect to the empty space (eastern portion of Lot 1), the Court noted the following:

x x x The eastern portion of Lot 1, the area in contention, is an empty space except for concrete benches along the perimeter. A partly cemented path runs across this lot from east to west leading up to the front or entrance of the church and appears to be an extension of Anunciacion St., which runs from the bank of the Catarman river up to Mendiola St. In the middle of this path, half-way between Mendiola St. and the church, is a statue of the Sacred Heart of Jesus.

x x x

x x x The Roman Catholic Church had made no improvements on this eastern portion of Lot 1, which at present is

being used as a public playground, although a bandstand stood there for about three years after it was constructed in 1926 by the members of an orchestra which was organized by a Fr. Ranera and which used to give musical performances on the bandstand. On the feast of Corpus Christi the parishioners would construct an altar on this lot and hold the procession there.[35]

It is apparent that the Court adjudicated to the church the ownership of Lot 1 (except a portion thereof which was a public thoroughfare) because the latter was able to establish that it had exercised acts of possession or ownership over the same including over its empty space. In particular, the empty space was used for religious functions, such as the Feast of Corpus Christi and the procession held on the occasion and the church did not ask for any permit from the local authorities whenever it used the said space for such activities.

In the present case, the petitioner has not shown that, at one time after the church was built in 1894 in the middle of Lot 138 (now Lot 138-B), it exercised acts of ownership or possession over Lots 138-A and 138-C as well.

It must be emphasized that the petitioner's allegation that it merely tolerated the construction of not only the municipal building but also the other improvements thereon, e.g., the rural health center, Buruanga community Medicare hospital, basketball court, Rizal monument and grandstand, has remained unsubstantiated. The affidavit of Fr. Patiño was correctly not given any credence since he was not presented on the witness stand; thus, considered hearsay. Hearsay evidence is generally excluded because the party against whom it is presented is deprived of his right and opportunity to cross-examine the person to whom the statement or writing is attributed.[36]

The testimony of Mr. Jaime S. Prado, Sr., an octogenarian and resident of Buruanga, cannot likewise be given any credence because it consisted only of a bare assertion that the church building and the land on which it was built, bounded by streets on all its four sides, were the petitioner's property.[37] He based this statement on the fact that as a child he heard masses at the church with his parents. This assertion, without more or without any corroborative evidence, is not sufficient to establish the petitioner's ownership over Lots 138-A and 138-C especially in light of the fact that Mr. Prado is not competent to testify on the matter because he had no actual personal knowledge with respect to any transactions involving Lot 138:

FISCAL DEL ROSARIO:

Q Now, when you were President of the Parish Council, have you access of any documents relating to church properties in Buruanga, Aklan?

A Never.

Q Now, you have stated that the boundaries of the property of the [R]oman [C]atholic [C]hurch in Buruanga, Aklan has previous names thus, the present name of Viven Ostan, Nitoy Sualog and Emilio Ostan is at present now. My question is, what was the previous names of these roads?

A Of Nitoy Sualog, that was Malilipayon Street. The Provincial road street, before that was Kaaganhon street, West, Emilio Ostan, before that was Kahaponanon Street and instead of Viven Ostan, that was Kabulakan Street.

Q So, you will agree with me Mr. Witness so, that previous names is not in any way related to the names of former parish priest[s] of Buruanga, Aklan or saints, am I right?

A No, sir.

Q You know very well Rev. Jesus Patinio and Mayor Pedro Omugtong?

A Yes, sir.

Q Now, do you remember if there was any transaction of them during your lifetime?

A This Padre Patinio and I were close friends. Mr. Omugtong met Patinio[,] talked together about the land they agreed[,] and I don't know what is there (sic) agreement but the building was constructed then.

Q Were you present during the talked (sic) of Rev. Jesus Patinio and Mayor Pedro Omugtong?

A No, sir.

Q You identified in this Exhibit "F" as Municipal Hall, Rural Health Unit Hospital, the Buruanga Community Hospital, Basketball Court and the Grandstand. Now, my question is, are these buildings constructed by the [R]oman [C]atholic [C]hurch?

A Not one.[38]

Even the affidavits of the other residents of Buruanga, which were also properly considered hearsay, made no mention of any instance where the petitioner exercised acts of dominion over Lots 138-A and 138-C. These affidavits uniformly stated:

That we have been residing in this Municipality since birth and that we have full knowledge of the site where the church now stands;

That during the Pre-Spanish time, the site of the town proper was swampy, fishermen used to fish in the swamp, trees of different kinds grows (sic) along the beach;

That when the Spaniards arrived in our town, they introduced education and religion;

That because there was no site for the church, the Spaniards forced the inhabitants to work for the filling up of the swamp, men are hauling stones[,] and women[,] sand and gravel;

That after so many years of hard labor the swamp was filled up and then the friars build a church in the center of the town;

That as far as we are concerned the site where the church now stand and the surrounding area and the site where the present Municipal building now stands is even the part of the property of the church and not the property of the municipality as allege (sic) by the Mayor;

That we execute this affidavit with our own free act and voluntary deed.[39]

The information proffered by these affidavits could not have been based on the personal knowledge of the affiants because they obviously were not yet born when the events they narrated took place.[40]

Like in Bishop of Calbayog, the Court in *Hacbang v. Director of Lands*[41] adjudicated to the church the ownership of two parcels of land, designated as Lots 1 and 2 despite the opposition of the Director of Lands who

claimed that a portion on the eastern part of Lot 1 and the entire Lot 2 were public plazas. The Court affirmed the ownership of the church over these lots upon the following findings:

It is inferred from the foregoing facts which are held to have been indisputably established by the evidence, that the disputed portion of lot No. 1 as well as the entire lot No. 2 belongs to the Roman Catholic Apostolic Church of the Diocese of Samar and Leyte. It cannot be denied that said church, for more than half a century, was in the possession of said lands together with the church, belfry and convent which existed first on lot No. 1 and later provisionally on lot No. 2. The fact that the catholic cemetery was located on lot No. 2 and that the stone posts and pillars were later erected thereon, thereby converting it into a place for the celebration of the Way of the Cross, conclusively proves that the property belonged to the church and that the latter's possession has constantly been under claim of ownership.

x x x [I]t must be presumed upon these facts that said portion formed part of the parcels of land assigned and adjudicated by the authorities to the Roman Catholic Apostolic Church in said town for the erection of the church, belfry, convent and cemetery, all of which, as everybody knows, are necessary for the practice and celebration of the cults of said religion.[42]

The proprietary acts exercised by the church over the disputed lots consisted of the construction thereon of the church, belfry, convent and cemetery. Moreover, it conducted thereon the Way of the Cross and other religious celebrations.

Unlike in the Bishop of Calbayog and Hacbang, in the present case, the petitioner has not shown that it exercised proprietary acts or acts of dominion over Lots 138-A and 138-C, to the exclusion of others, to buttress its claim of ownership over these lots.

Neither can the petitioner rely on Roman Catholic Bishop of Jaro v. Director of Lands[43] where the Court categorically made the finding that the lot in question (Lot 3) had been in the possession of the church, as owner, for a time sufficiently long for purposes of prescription. In a prior case[44] involving the said lot, the Court adjudged that the church was "entitled to the possession of the following property situated in the Municipality of Sibalom: The Church of Sibalom, the convent, contiguous to the same, and the land occupied by these two buildings."

The Court interpreted the phrase "land occupied by the church ... and its convent" to mean "not only the two buildings, but also the land adjacent and contiguous to said buildings, that is, the parcel which by itself constitutes one whole piece of land bounded on its four sides by streets, and within which said buildings, the church and the convent, are situated." [45]

Significantly, the parcel of land that was adjudicated in favor of the church was the "land adjacent and contiguous to said buildings," i.e., church and convent. The word "adjacent" has been defined as follows:

The word "adjacent" is of Latin derivation. An examination of its original use clearly indicates that in order that things shall be adjacent they shall be thrown near together.

Webster in his International Dictionary defines "adjacent" as "lying near, close or contiguous; neighboring; bordering upon;" and gives as synonyms the words "adjoining, contiguous, near."

Roque Barcia in his "Diccionario General Etimológico de la Lengua Española," in defining the word "adjacent," uses as synonyms "inmediato, junto, próximo." Things cannot be "inmediatas, juntas, próximas" where other objects intervene.

Vicente Salva in his "Nuevo Diccionario Francés-Español" defines the word "adjacent" as "qui est situé auprès, aux environs."

Black in his Law Dictionary defines "adjacent" as "lying near or close to; contiguous. The difference between adjacent and adjoining seems to be that the former implies that two objects are not widely separated, though they may not actually touch."

Harpers' Latin Dictionary as revised by Lewis and Short, in defining the word "ad-jaceo," which is equivalent to the English word "adjacent," says it means "to lie at or near, to be contiguous to, to border upon."

The Universal Encyclopedia defines an adjacent angle as "an angle contiguous to another, so that one side is common to both angles."

In the case of *Miller v. Cabell* (81 Ky., 184) it was held that where a change of venue was taken to an adjacent county it must be taken to an adjoining county.

In the case of *Camp Hill Borough* (142 Penn. State, 517), it was held that the word "adjacent" meant adjoining or contiguous.

In the case of *In re Municipality, etc.* (7 La. Ann., 76), the court said: "We think the word "adjacent," applied to lots, is synonymous with the word "contiguous.""

In the case of *the People v. Schemerhorne* (19 Barber [N.Y.], 576), the court said: "The interpretations given to the "adjacent" by Walker are "lying close, bordering upon something.""[46]

Black's Law Dictionary defines "contiguous" as "in close proximity; neighboring; adjoining; near in succession; in actual close contact; touching in at a point or along a boundary; bounded or traversed by."[47]

Applying the foregoing definitions, the "land adjacent and contiguous" to the church and the parish house in the present case is the land comprising Lot 138-B. On the other hand, Lots 138-A and 138-C are the lands adjacent and contiguous to the municipal building, rural health center, Buruanga community Medicare hospital, basketball court, Rizal monument and grandstand thereon.

Roman Catholic Bishop of Jaro therefore is not squarely applicable to the present case because of significant factual differences. Specifically, in the former, the buildings or structures on the disputed land all belonged to the church; hence, this fact was construed by the Court in favor of the church as constituting its exercise of acts of dominion over the land adjacent and contiguous to these buildings. On the other hand, the municipal building, rural health center, Buruanga community Medicare hospital, basketball court, Rizal monument and grandstand, all standing on Lots 138-A and 138-C, are not owned by the petitioner. Moreover, the petitioner has not shown that it had, at any time, exercised acts of dominion over these lots. Consequently, given its tenuous claim of ownership, Lots 138-A and 138-C, the lands adjacent and contiguous to the buildings and improvements which admittedly do not belong to the petitioner, cannot be adjudicated to the latter under the circumstances.

Seminary of San Carlos v. Municipality of Cebu,[48] cited in *Roman Catholic Bishop of Jaro*, is also unavailing to the petitioner because the Court, among others, simply explained therein that the word "church" refers to the land upon which the church stands, and not to the church building itself. In the present case, the petitioner's ownership has not been limited by the court a quo and the appellate court to the church structure itself but also as including Lot 138-B, on which it stands.

In *Roman Catholic Apostolic Church v. Municipality of Placer*,[49] the Court definitively recognized the juridical personality and proprietary rights of the church citing the Treaty of Paris[50] and other pertinent Spanish laws. It held therein that the church not only was entitled to the possession of the church, convent and cemetery of Placer but was also the lawful owner thereof.

It bears stressing that the crux in the foregoing cases, particularly *Bishop of Calbayog*, *Hacbang* and *Jaro*, is that

the church had indubitably established its exercise of exclusive proprietary acts on the lots that were subject of the controversy. The same cannot be said with respect to the petitioner in relation to Lots 138-A and 138-C. In fact, not one of the enumeration ([a] to [n]) made by the petitioner in its Petition for Review as allegedly showing its ownership over Lots 138-A and 138-C categorically establishes that it exercised thereon exclusive proprietary acts or acts of dominion.

The ruling in *Harty v. Municipality of Victoria* is applicable to the present case

Contrary to the stance taken by the petitioner, the ruling in *Harty v. Municipality of Victoria*^[51] is applicable to the present case. The said case involved the dispute between the church and the Municipality of Victoria over the parcel of land that surrounded the parish church of the said town, and which was called the public plaza of the same. The Court therein held that "the whole of the land not occupied by the church of the town of Victoria and its parish house, is a public plaza of the said town, of public use." It justified its conclusion, thus:

x x x

From the evidence presented by both parties it appears that the town of Victoria, which was formerly only a barrio of the town of Tarlac and known as Canarum, was converted into a town in 1855, and named Victoria; to this end they must have laid out the streets and the plaza of the town, in the center of which were situated the church and parish house from the commencement, and at the expiration of about twelve years the parish of said town was constituted and the priest, who was to perform the office of curate, was appointed; that from the very beginning, the large tract of land that surrounds the church and the parish house was known as a public plaza, destined to the use of all the residents of the recently founded town; public performances and religious processions were held thereon without hindrance either on the part of the local authorities or of the curate of said town.

It must be assumed that the principal residents of the old barrio, being interested in the conversion of the barrio into a civil town, arranged in such a way that the barrio, as the center of the future town which was subsequently called Victoria, should have streets and a public plaza with its church and parish house, and also a tribunal or building destined for the use of the municipality and the local official at the time called the *gobernadorcillo* and later on *capitan municipal*, as has occurred in the foundation of all the towns in these Islands, under the old administrative laws.

It may be true that the father of the witness Casimiro Tañedo, who owned the space of land where the church and parish house were erected, had voluntarily donated it to the Catholic Church, the only one known at the time, but proper proof is lacking that the donation affirmed by the said Tañedo comprehended the whole of the large tract which at the present time constitutes the plaza of the town.

It was a custom observed by all the towns established administratively in these Islands under the old Laws of the Indies, that on their creation, a certain amount of land was always reserved for plazas, commons, and special and communal property, and as it is unquestionable that the said large space of land was left vacant in the center of the town of Victoria when it was constituted as a civil town, more than twelve years prior to the appointment of a permanent curate therein, there are good grounds to suppose that the late Vicente Tañedo donated the land now occupied by the church and parish house in said municipality for religious purposes, or to the church, but not to the parish curate, because at the time there was no curate at the new town of Victoria.

Even though all the remaining space of land which now forms the great plaza of the town of Victoria had been owned by the said Tañedo, it must be presumed that he waived his right thereto for the benefit of the townspeople, since from the creation or establishment of the town, down to the present day, all the residents, including the curate of said town, have enjoyed the free use of said plaza; it has not been satisfactorily shown that the municipality or the principales of the town of Victoria had donated the whole of said land to the curate of Victoria or to the Catholic Church, as alleged, nor could it have been so donated, it being a public plaza

destined to public use and was not private ownership, or patrimony of the town of Victoria, or of the Province of Tarlac.

It should be noted that, among other things, plazas destined to the public use are not subject to prescription. (Art. 1936, Civil Code.) That both the curates and the gobernadorcillos of the said town procured fruit trees and plants to be set out in the plaza, does not constitute an act of private ownership, but evidences the public use thereof, or perhaps the intention to improve and embellish the said plaza for the benefit of the townspeople.

Certain it is that the plaintiff has not proven that the Catholic Church or the parish of Victoria was the owner or proprietor of the said extensive piece of land which now forms the public plaza of said town, nor that it was in possession thereof under the form and conditions required by law, inasmuch as it has been fully proven that said plaza has been used without let or hindrance by the public and the residents of the town of Victoria ever since its creation. For the above reasons, it is our opinion that the judgment appealed from should be reversed, and that it should be held, as we do hereby hold, that the whole of the land not occupied by the church of the town of Victoria and its parish house, is a public plaza of the said town, of public use, and that in consequence thereof, the defendant is absolved of the complaint without any special ruling as to the costs of both instances.[52]

The petitioner argues against the applicability of Harty as it makes much of the fact that the disputed lot therein was situated across the street from the church lot. When the Court therein limited the ownership of the church to the land "occupied by the church of the town of Victoria and its parish house," it did not allegedly confine its ownership to a portion of the lot on which the church and parish house were situated but to the block occupied by these structures.

To the Court's mind, however, whether the disputed lot was on the same block as the church or separated therefrom by a street was not the crucial factor which constrained the Court in Harty to rule against the church's claim of ownership over the said property. Rather, it was the fact that the church was not able to prove its ownership or possession thereof. The ruling on this point is reiterated below:

Certain it is that the plaintiff has not proven that the Catholic Church or the parish of Victoria was the owner or proprietor of the said extensive piece of land which now forms the public plaza of said town, nor that it was in possession thereof under the form and conditions required by law, x x x[53]

As applied to the present case, that Lots 138-A and 138-C are on the same block as the lot on which the church and its parish house stand do not necessarily make them (Lots 138-A and 138-C) also the property of the petitioner absent any evidence that its ownership or possession extended to these lots and under the conditions required by law.

Contrary to its submission, the petitioner hadnot acquired ipso jure or by operation of law a government grant or title to the entire Lot 138

The petitioner submits that even granting arguendo that the entire Lot 138 was not assigned to it during the Spanish regime or it is not the owner thereof pursuant to the Laws of the Indies, its open, continuous, exclusive and notorious possession and occupation of Lot 138 since 1894 and for many decades thereafter vests ipso jure or by operation of law upon the petitioner a government grant, a vested title, to the subject property. It cites Subsection 6 of Section 54 of Act No. 926[54] and Subsection b of Section 45 of Act No. 2874.[55]

This contention is likewise not persuasive.

One of the important requisites for the application of the pertinent provisions of Act No. 926 and Act No. 2874 is the "open, continuous, exclusive and notorious possession and occupation" of the land by the applicant. Actual possession of land consists in the manifestation of acts of dominion over it of such a nature as a party would

naturally exercise over his own property.[56] The phrase "possession and occupation" was explained as follows:"

It must be underscored that the law speaks of "possession and occupation." Since these words are separated by the conjunction and, the clear intention of the law is not to make one synonymous with the other [sic]. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word occupation, it seeks to delimit the all-encompassing effect of constructive possession. Taken together with the words open, continuous, exclusive and notorious, the word occupation serves to highlight the fact that for one to qualify under paragraph (b) of the aforesaid section, his possession of the land must not be mere fiction. As this Court stated, through then Mr. Justice Jose P. Laurel, in *Lasam v. The Director of Lands*:

x x x Counsel for the applicant invokes the doctrine laid down by us in *Ramos v. Director of Lands*. But it should be observed that the application of the doctrine of constructive possession in that case is subject to certain qualifications, and this court was careful to observe that among these qualifications is "one particularly relating to the size of the tract in controversy with reference to the portion actually in possession of the claimant." While, therefore, "possession in the eyes of the law does not mean that a man has to have his feet on every square meter of ground before it can be said that he is in possession," possession under paragraph 6 of section 54 of Act No. 926, as amended by paragraph (b) of section 45 of Act No. 2874, is not gained by mere nominal claim. The mere planting of a sign or symbol of possession cannot justify a Magellan-like claim of dominion over an immense tract of territory. Possession as a means of acquiring ownership, while it may be constructive, is not a mere fiction. x x x

x x x

Possession is open when it is patent, visible, apparent, notorious and not clandestine. It is continuous when uninterrupted, unbroken and not intermittent or occasional; exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and notorious when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood. Use of land is adverse when it is open and notorious.[57]

Indisputably, the petitioner has been in open, continuous, exclusive and notorious possession and occupation of Lot 138-B since 1894 as evidenced by the church structure built thereon. However, the record is bereft of any evidence that would tend to show that such possession and occupation extended to Lots 138-A and 138-C beginning the same period. No single instance of the exercise by the petitioner of proprietary acts or acts of dominion over these lots was established. Its unsubstantiated claim that the construction of the municipal building as well as the subsequent improvements thereon, e.g., the rural health center, Buruanga community Medicare hospital, basketball court, Rizal monument and grandstand, was by its tolerance does not constitute proof of possession and occupation on its (the petitioner's) part.

Absent the important requisite of open, continuous, exclusive and notorious possession and occupation thereon since 1894, no government grant or title to Lots 138-A and 138-C had vested upon the petitioner ipso jure or by operation of law. Possession under paragraph 6 of section 54 of Act No. 926, as amended by paragraph (b) of section 45 of Act No. 2874, is not gained by mere nominal claim.[58] Lots 138-A and 138-C comprise the public plaza and are property of public dominion;

hence, not susceptible to private ownership

by the petitioner or respondent municipality

The appellate court correctly declared that Lots 138-A and 138-C comprise the public plaza and are property of public dominion; hence, may not be the object of appropriation either by the petitioner or respondent municipality. In support thereof, it cited *Bishop of Calbayog v. Director of Lands* (45 SCRA

This ruling [referring to *Harty*] was, in fact, reiterated in *Bishop of Calbayog v. Director of Lands* (45 SCRA

418) involving the same question of ownership of the land which surrounded the parish church of the town. The Supreme Court therein declared that the public plaza and public thoroughfare are not subject to registration by the church; that since neither the Church nor the municipality presented positive proof of ownership or exclusive possession for an appreciable period of time, and the only indubitable fact is the free and continuous use of Lot 2 by residents of Catarman, and the town had no public plaza to speak of other than the disputed parcel of land, there was a strong presumption that the same had been segregated as a public plaza upon the founding of the municipality of Catarman. x x x[59]

As can be gleaned, the above discussion principally pertained to Lot 2, a public plaza the ownership of which was disputed by the Bishop of Calbayog and the Municipality of Catarman.

The appellate court correctly cited Bishop of Calabayog. However, the ruling therein pertaining to a portion of Lot 1 occupied by a public thoroughfare is more apropos to the present case. To recall, in the said case, the application of the Bishop of Calabayog as to the eastern portion of Lot 1 was also being opposed by the Municipality of Catarman on the ground that it was part of the public plaza. As mentioned earlier, the Court upheld the ownership of the church over Lot 1 including not only the space occupied by the church, belfry, convent, parish school and nuns' residence, but also the empty space which only had some benches as improvements thereon. Significantly, the portion of Lot 1 occupied by a public thoroughfare (Nalazon Street) was ordered excluded from the application for registration filed by the church. The Court therein made the following findings with respect to the public thoroughfare:

Admittedly Nalazon St. was originally merely a trail used by the parishioners in going to and from the church. But since 1910, when it was opened and improved as a public thoroughfare by the municipality, it had been continuously used as such by the townspeople of Catarman without objection from the Church authorities. The acacia trees along both sides of the street were planted by the municipality in 1920, although these trees were cut down recently upon order of the priest. There is no proof that the Church merely tolerated and limited the use of this street for the benefit of its parishioners, considering that the street traverses the entire length of the poblacion from south to north and that Lot 1, on which the church stands, is located almost at the center of the poblacion. The street does not stop on Lot 1 but extends north toward the sea, passing along the lot occupied by the Central Elementary School and the Northern Samar General Hospital. Thus, it is clear that Nalazon St. inside Lot 1 is used by the residents not only in going to the church but to the public school and the general hospital north of Lot 1.[60]

In the present case, the following improvements now stand on Lots 138-A and 138-C: the municipal building, rural health center, Buruanga community Medicare hospital, basketball court, Rizal monument and grandstand. Except for the construction of the municipal building, the other improvements were made on Lots 138-A and 138-C, and continuously used by the public without the petitioner's objection. Further, there is no proof that the petitioner merely tolerated the construction of these improvements. On the other hand, the free and continuous use by the public of Lots 138-A and 138-C, as found by the court a quo and affirmed by the appellate court, incontrovertibly establishes that they are property for public use. On this point, Articles 420, quoted anew below, and 424 of the Civil Code are applicable:

Art. 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

...Art. 424. Property for public use, in the provinces, cities, and municipalities, consist of the provincial roads, city streets, municipal streets, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities or municipalities.

Property for public use of provinces and towns are governed by the same principles as property of public dominion of the same character.[61] The ownership of such property, which has the special characteristics of a collective ownership for the general use and enjoyment, by virtue of their application to the satisfaction of the collective needs, is in the social group, whether national, provincial, or municipal.[62] Their purpose is not to serve the State as a juridical person, but the citizens; they are intended for the common and public welfare, and so they cannot be the object of appropriation, either by the State or by private persons.[63]

The appellate court committed no reversible error in denying the petitioner's motion for reception of evidence

In denying the petitioner's motion for reception evidence, the appellate court reasoned that based on the records, the petitioner was already accorded the full opportunity to present its evidence in the court a quo and that the evidence to be introduced in the desired hearing would not directly establish its ownership of the disputed lots.[64]

The petitioner's motion for reception of evidence filed with the appellate court stated that the additional evidence that it sought to submit consisted of affidavits of old residents of Buruanga attesting to the fact that "the old municipal building was in fact at a place called Sunset Park prior to its transfer to the present site." [65] These affidavits would allegedly establish that respondent municipality could not be the owner of Lots 138-A and 138-C which it had neither possessed nor occupied.[66]

The appellate court did not err in denying the petitioner's motion for reception of evidence. Indeed, the petitioner was already given full opportunity during the trial in the court a quo to adduce any and all relevant evidence to substantiate its claim of ownership over the entire Lot 138. In no sense, therefore, may it be argued that it was denied due process of law.[67]

With the reality that those documents were never presented and formally offered during the trial in the court a quo, their belated admission for purposes of having them duly considered in the resolution of the case on appeal would certainly collide with Section 34, Rule 132 of the Rules of Court which reads:

SECTION 34. Offer of Evidence. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.[68]

In any case, as correctly stated by the appellate court, these affidavits would not directly establish the petitioner's ownership over Lots 138-A and 138-C.

WHEREFORE, premises considered, the petition is DENIED. The Decision dated January 31, 2001 of the Court of Appeals and its Resolution dated July 18, 2001 in CA-G.R. CV No. 52626 are AFFIRMED in toto.

SO ORDERED.

Panganiban, C.J., Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

[1] Represented by Bishop Juan N. Nilmar.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Fermin A. Martin, Jr. and Mercedes Gozo-Dadole concurring; rollo, pp. 43-52.

[3] Records, p. 1.

[4] Subsequent pleadings of the Roman Catholic Bishop of Kalibo, however, placed the commencement of the

construction of the municipal building on the disputed lot some time in 1958.

[5] Exhibit "H," folder of exhibits, p. 32.

[6] Folder of exhibits, p. 31.

[7] Records, p. 11.

[8] As appearing in the Plan of Property of Municipality of Buruanga, Exhibit "1" of the said municipality.

[9] Records, p. 26.

[10] Id. at 31.

[11] Id. at 47.

[12] Exhibits "A," "B," "K," "L" and "M," folder of exhibits, pp. 1, 2, 37-39.

[13] Exhibit "B," id. at 2.

[14] Exhibits "C" (pastoral letter), id. at 3; "D" (petition signed by residents of Buruanga), id. at 4-28 and; "N" to "Q" (affidavits), id. at 40-43.

[15] Exhibit "P," id. at 42.

[16] Records, p. 173.

[17] 13 Phil. 152 (1909).

[18] Id. at 157.

[19] Records, p. 174.

[20] 150-A Phil. 806 (1972).

[21] The provision reads:

Art. 419. Property is either of public dominion or of private ownership.

[22] The provision reads in part:

Art. 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character.xxx

[23] Rollo, p. 51.[24] Rollo, p. 16.[25] Rollo, pp. 252-259.[26] 54 Phil. 538 (1930).[27] The Petitioner's Memorandum, pp. 24-25, citing Roman Catholic Bishop of Jaro v. Director of Lands, id. at 540-541.[28] Roman Catholic Bishop of Jaro v. Director of Lands, supra note 26; Municipality of Catbalogan v. Director of Lands, 17 Phil. 216 (1910); Hacbang v. Director of Lands, 61 Phil. 669 (1935).

[29] 11 Phil. 315 (1908).[30] Citing, among others, Roman Catholic Apostolic Church v. Municipality of Placer, supra note 29. and; Roman Catholic Bishop of Jaro v. Director of Lands, supra note 26. [31] Memorandum of the Petitioner, p. 31; Rollo, p. 269.

[32] Law VIII, Title VII, Book IV, Recopilaci?n de Leyes de los Reynos de las Indias. Translated as follows in Roman Catholic Bishop of Jaro v. Director of Lands, supra:In inland places, the church is not to be built on the square, but at some distance from it, where it will be separate from every other building not ministering to its

comfort and ornamentation; and in order that it may from all points be seen and the better venerated, let it be somewhat raised from the ground, with steps leading up to it; and, between the main square and the church shall be constructed the government administration buildings (Casas Reales, Cabildos o Concejo, Aduana y Atarazana) at such distance as not to shut the church from view, nor to interfere with it, and in case of necessity to be able to render assistance, and if the town be on the coast, let the church be so placed as to meet the eye of one coming from the sea, and be so constructed as to serve for the defense of the port, with residential lots close to it and booths on the square for burghers, imposing a moderate tax upon the merchandise; and let it be thus also in smaller localities in the matter of parish churches and monasteries, wherever convenient.[33] *Municipality of Catbalogan v. Director of Lands*, 17 Phil. 216, 219-221 (1910); *Municipality of Tacloban v. Director of Lands*, 17 Phil. 428, 431-433 (1910).[34] *Supra* note 20.

[35] *Id.* at 809-810.

[36] REGALADO, II REMEDIAL LAW COMPENDIUM 619 (2000 ed.).

[37] TSN, Direct testimony of Mr. Prado, Sr., January 9, 1992, p. 6.[38] *Id.* at 14-15.

[39] *Supra* note 12.

[40] For example, the oldest affiant, Rita Prado, was 79 years old at the time of the execution of her affidavit on February 11, 1978. She was therefore born some time in 1899. The church of Buruanga was purportedly built in 1894. Hence, Rita Prado, as well as the other affiants who were younger than she was, could not have any personal knowledge as to the construction of the said church as well as the events that took place prior thereto because they were not as yet born during the said period.[41] *Supra* note 28.

[42] *Id.* at 672-673. (Citations omitted).[43] *Supra* note 26.

[44] 10 Phil. 744 (1908).

[45] Citing *Director of Lands v. Aboc*, G.R. No. 15695, 28 October 1926. Unreported.

[46] Dissenting Opinion of Justice Johnson in *Catholic Church v. Hastings, et al.*, 5 Phil. 701-717 (1906).

[47] Citing *Ehle v. Tenney Trading Co.*, 107 P.2d 210, 212.[48] 19 Phil. 32 (1911).[49] *Supra* note 29. [50] Article VIII thereof stated:

And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, can not in any respect impair the property or rights which by law belongs to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories, renounced or ceded, or of private individuals of whatever nationality such individuals may be.

[51] *Supra* note 17.

[52] *Id.* at 155-157.

[53] *Id.* at 157.[54] *Supra*.[55] *Supra*.[56] *Ramos v. Director of Lands*, 39 Phil. 175 (1918).[57] *Director of Lands v. Intermediate Appellate Court*, G.R. No. 68946, May 22, 1992, 209 SCRA 214, 222-224.[58] *Id.*

[59] CA Decision, p. 7; Rollo, p. 49.

[60] *Bishop of Calbayog v. Director of Lands*, *supra* note 20, at 813.[61] TOLENTINO, II CIVIL CODE OF THE PHILIPPINES 38 citing 3 MANRESA 111.[62] *Id.*

[63] Id.[64] CA Resolution dated August 4, 1998; CA rollo, p. 91.[65] CA rollo, p. 79.[66] Id. at 80.[67] Ragudo v. Fabella Estate Tenants Association, Inc., G.R. No. 146823, August 9, 2005, 466 SCRA 136, 147. [68] Id. at 148.

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