

FEDERATION OF CORON, BUSUANGA, PALAWAN FARMER'S ASSOCIATION, INC. (FCBPFAI), REPRESENTED BY ITS CHAIRMAN, RODOLFO CADAMPOG, SR.; SAMAHAN NG MAGSASAKA SA STO. NINO, BUSUANGA, PAL...

G.R. No. 247866. September 15, 2020

Ponente: GESMUNDO, J.

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GESMUNDO, J.:

This is a petition for certiorari seeking to declare as unconstitutional Section 3(a) of Presidential Decree (P.D.) No. 705, or the Forestry Reform Code of the Philippines.

The Antecedents

Petitioners Federation of Coron, Busuanga, Palawan Farmer's Association, Inc., (FCBPFAI) and Sandigan ng Mambubukid ng Bintuan Coron, Inc., (SAMBICO) are federations consisting of farmers in Palawan. Sometime in 2002, the farm lands occupied by the members of SAMBICO in Sitio Dipangan and Langka, Brgy. Bintuan, Coron, Palawan were placed under the coverage of the Comprehensive Agrarian Reform Program (CARP) by the Department of Agrarian Reform (DAR). The lands placed under CARP had titles in the name of Mercury Group of Companies, covering a total area of 1,752.4006 hectares.[1]

However, the implementation of the CARP over the subject lands was stopped because the said lands were unclassified forest land under Sec. 3(a) of P.D. No. 705 and thus, are inalienable and belong to the government. As these are forest lands, they are under the administration of the Department of Environment and Natural Resources (DENR) and not the DAR.[2]

In March 2014, a meeting was conducted at the office of the DAR, Coron, Palawan, attended by the Legal Division Region IV-B, where petitioner Rodolfo Cadampog, Sr. of FCBPFAI was formally informed that the CARP coverage will not push through because the lands were unclassified forest land.[3]

Similarly, members of the Samahan ng Magsasaka ng Sto. Nino (SAMMASA) alleged that they farmed the lands of Brgy. Sto. Nino, Busuanga, Palawan. Farming was their means of livelihood even before their barangay was established in the 1960s. Sometime in 1980, the farm lands they tilled were placed under the coverage of CARP. The land tilled by the farmers was originally titled under the name of a certain Jose Sandoval. However, the land distribution was stopped under the CARP because the DENR stated that the said lands were unclassified forest land under Sec. 3(a) of P.D. No. 705 and these forest lands belong to the government.[4]

In April 3, 2014, petitioner Rodolfo Cadampog, Sr., of FCBPFAI received a letter from Provincial Agrarian Reform Program Officer (PARPO) Conrado S. Gueverra stating that the lands of Mercury Group of Companies and Josefa Sandoval Vda. De Perez are within the forest classification of the DENR under Sec. 3 (a) of P.D. No. 705. Thus, the same cannot be covered by CARP.[5]

Hence, this petition to declare Sec. 3(a) of P.D. No. 705 unconstitutional.

Issue

WHETHER SECTION 3(a) OF PRESIDENTIAL DECREE NO. 705 IS UNCONSTITUTIONAL.

Petitioners argue that Sec. 3(a) of P.D. No. 705 violates the Philippine Bill of 1902 and the 1935, 1973 and 1987 Constitution; that under the Philippine Bill of 1902, when an unclassified land is not covered by trees and has not been reserved as a forest land, then it is considered as an agricultural land; that Sec. 3(a) retroactively changed the unclassified lands into forest lands; that the said law deprived millions of Filipinos, who possess land and informally settle on the land, with their vested right of ownership; that it unreasonably stated that unclassified land shall be forest land; instead, petitioners insist that unclassified land should be considered as alienable and disposable land of public domain; and that only those lands with trees and timber should be considered as forest land, and the rest should be considered as public agricultural land.

In their Comment,[6] respondents Secretary of the DENR and DAR, as represented by the Office of the Solicitor General (OSG), countered that petitioners failed to overcome the presumption of constitutionality of the law; that petitioners have no locus standi to file the petition; that the Philippine Bill of 1902 simply gave the State the power to classify lands; that pursuant to the Regalian Doctrine, all lands belong to the State and there must be a positive act from the State before the land can be alienable and disposable; that Sec. 3(a) of P.D. No. 705 is in accordance with the Regalian Doctrine; and that there is no violation of the rights of petitioners because unclassified lands, which are forest lands, belong to the State, hence, petitioners have no property rights to be violated.

In their Reply,[7] petitioners argued that they have the locus standi to file this petition; that prior to Sec. 3(a) of P.D. No. 705, there was no requirement that land must first be declared alienable and disposable before it could subject to private ownership; that informal settlement or material occupancy of vacant crown lands were allowed; that there is a presumption that land is agricultural unless the contrary is shown; and that Sec. 3(a) of P.D. No. 705 renders the implementation of the land reform under CARP impossible because the biggest landowner is the government.

The Court's Ruling

The petition lacks merit.

Presumption of constitutionality;
locus standi

Every statute has in its favor the presumption of constitutionality. This presumption is rooted in the doctrine of separation of powers which enjoins upon the three (3) coordinate departments of the government a becoming courtesy for each other's acts. The theory is that every law, being the joint act of the Legislature and the Executive, has passed careful scrutiny to ensure that it is in accord with the fundamental law. This Court, however, may declare a law, or portions thereof, unconstitutional, where a petitioner has shown a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative one. In other words, the grounds for nullity must be beyond reasonable doubt, for to doubt is to sustain.[8]

The presumption of constitutionality, in its most basic sense, only means that courts, in passing upon the validity of a law, will afford some deference to the statute and charge the party assailing it with the burden of showing that the act is incompatible with the Constitution. The doctrine comes into operation when a party comes to court praying that a law be set aside for being unconstitutional. In effect, it places a heavy burden on the act's assailant to prove invalidity beyond reasonable doubt; it commands the clearest showing of a constitutional infraction.

Thus, before a law may be struck down as unconstitutional, courts must be certain that there exists a clear and unequivocal breach of the constitution, and not one that is speculative or argumentative.[9]

The fundamental criterion is that all reasonable doubts should be resolved in favor of the constitutionality of a statute. Every law has in its favor the presumption of constitutionality. For a law to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution. The ground for nullity must be clear and beyond reasonable doubt. Those who seek to declare the law, or parts thereof, unconstitutional, must clearly establish the basis therefore. Otherwise, the arguments fall short.[10]

In this case, petitioners assail Sec. 3(a) of P.D. No. 705. However, the Court finds that petitioners failed to discharge the heavy burden in assailing the constitutionality of the law. As will be discussed later, Sec. 3(a) is consistent with the Constitution, which adapted the Regalian Doctrine that all lands of public domain belong to the State.

Further, petitioners failed to prove that they have the locus standi to raise a constitutional question. Legal standing or locus standi is defined as a "personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged." For a citizen to have standing, he must establish that he has suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; the injury is fairly traceable to the challenged action; and the injury is likely to be redressed by a favorable action.[11]

A party is allowed to "raise a constitutional question" when (1) he can show that he will personally suffer some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action. Jurisprudence defines interest as "material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. By real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest."[12]

In this case, aside from their bare assertion that they are recipients of the distribution of the lands in Sitio Dipangan and Langka, Brgy. Bintuan, Coron, and Brgy. Sto. Nino, Busuanga, Palawan under the CARP, petitioners failed to substantiate their claim of ownership and possession over the same. As properly pointed out by respondents, petitioners have not presented any evidence to prove that they actually occupy the lands much less that the lands are alienable and disposable.[13] Further, petitioners have not even alleged that they attempted to file an application to have the subjects lands re-classified from forest lands to alienable and disposable lands of public domain with the proper government agency and that their application was denied. Hence, no actual or threatened injury can be attributed to petitioners.

In any case, even on the substantive aspect, the petition fails.

Sec. 3 (a) is constitutional;
Regalian Doctrine

Sec. 3(a) of P.D. No. 705 states:

(a) Public forest is the mass of lands of the public domain which has not been the subject of the present system of classification for the determination of which lands are needed for forest purposes and which are not.

According to petitioner, it is against the Constitution to declare that unclassified lands should be treated as forest lands because it deprives the actual possessors of the land to claim ownership over it; and that under the Philippine Bill of 1902, lands of public domain are presumed to be agricultural lands.

The argument, however, of petitioner is not of first impression; rather, this issue has already been settled in several decisions of the Court, particularly, in *Heirs of the late Spouses Vda. de Palanca v. Republic* (Vda. De Palanca)[14] and *The Secretary of the Department of Environment and Natural Resources v. Yap (Yap)*. [15] It is already well-settled that unclassified land cannot be considered as alienable and disposable land of public domain pursuant to the Regalian Doctrine.

Pursuant to the Regalian Doctrine (*Jura Regalia*), a legal concept first introduced into the country from the West by Spain through the Laws of the Indies and the Royal Cédulas, all lands of the public domain belong to the State. This means that the State is the source of any asserted right to ownership of land, and is charged with the conservation of such patrimony. All lands not appearing to be clearly under private ownership are presumed to belong to the State. Also, public lands remain part of the inalienable land of the public domain unless the State is shown to have reclassified or alienated them to private persons.[16]

To further understand the Regalian Doctrine, a review of the previous Constitutions and laws is warranted. The Regalian Doctrine was embodied as early as in the Philippine Bill of 1902. Under Section 12 thereof, it was stated that all properties of the Philippine Islands that were acquired by the United States through the treaty with Spain shall be under the control of the Government of the Philippine Islands, to wit:

SECTION 12. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety- eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are hereby placed under the control of the Government of said Islands, to be administered for the benefit of the inhabitants thereof, except as provided in this Act.

The only exception in the Regalian Doctrine is native title to land, or ownership of land by Filipinos by virtue of a claim of ownership since time immemorial and independent of any grant from the Spanish Crown.[17] In *Cariño v. Insular Government*, [18] the United States Supreme Court at that time held that:

It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land.[19]

As pointed out in the case of *Republic v. Cosalan*: [20]

Ancestral lands are covered by the concept of native title that "refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest." To reiterate, they are considered to have never been public lands and are thus indisputably presumed to have been held that way.

The CA has correctly relied on the case of *Cruz v. Secretary of DENR*, which institutionalized the concept of native title. Thus:

Every presumption is and ought to be taken against the Government in a case like the present. It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way before the Spanish conquest, and never to have been public land.

From the foregoing, it appears that lands covered by the concept of native title are considered an exception to the Regalian Doctrine embodied in Article XII, Section 2 of the Constitution which provides that all lands of the public domain belong to the State which is the source of any asserted right to any ownership of land.[21]

On the other hand, Section 13 of the Philippine Bill of 1902 states that the Government of the Philippine Islands could classify the lands of public domain either as agricultural, timber or mineral land. Contrary to petitioners' assertion, the law does not provide any presumption that a land of public domain is agricultural. Notably, it merely gave the said government the prerogative to classify land; nothing therein states that unclassified lands are ipso facto treated as agricultural land, which are alienable and disposable, to wit:

SEC. 13. That the Government of the Philippine Islands, subject to the provisions of this Act and except as herein provided, shall classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands, but such rules and regulations shall not go into effect or have the force of law until they have received the approval of the President, and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensuing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: Provided, That a single homestead entry shall not exceed sixteen hectares in extent.

Further, Sec. 13 referred to the President of the United States, who had the power to classify public land, subject to the disapproval or amendment of the Congress of the United States. At that time, the Philippine Islands only had a Philippine Commission, which exercised the powers of the government,[22] but did not have the power to classify lands.

As the Executive and Legislative Branch in the Philippine Islands had no power to classify lands of public domain then, the Judiciary had the jurisdiction to determine for itself the classification of a particular parcel of land in justiciable cases. In *Ramos v. The Director of Lands (Ramos)*,[23] and *Ankron v. The Government of the Philippine Islands (Ankron)*,[24] which were decided under the Philippine Bill of 1902, the courts had a right to presume, in the absence of evidence to the contrary, that in each case the lands are agricultural lands. At that moment, since there was no central authority in the Philippine Islands to classify lands, the courts had to rely on their own judicial discretion with respect to the classification of land.

However, the power to classify the lands by the Philippine courts was finally removed in 1919 when Act No. 2874,[25] or the Public Land Act, was enacted, which stated that the Governor-General in the Philippines had the power to classify land:

SECTION 6. The Governor-General, upon the recommendation of the Secretary of Agriculture and Natural Resources, shall from time to time classify the lands of the public domain into —

- (a) Alienable or disposable
- (b) Timber, and
- (c) Mineral lands,

and may at any time and in a like manner, transfer such lands from one class to another, for the purposes of their government and disposition.

Then, under the 1935 Constitution, Commonwealth Act (C.A.) No. 141 or the present Public Land Act, was enacted. It retained the provision that the President of the Philippines had the power to classify lands of public domain, to wit:

SECTION 6. The President, upon the recommendation of the Secretary of Agriculture and Commerce, shall from time to time classify the lands of the public domain into —

- (a) Alienable or disposable
- (b) Timber, and
- (c) Mineral lands,

and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their administration and disposition, (emphasis supplied)

Thus, the State, through the legislature enacting Act No. 2874 and C.A. No. 141, delegated to the Executive Branch the power to classify lands of public domain and finally removed from the courts the power to classify such. Accordingly, the presumption of agricultural classification under *Ankron* and *Ramos* applied by the courts was also set aside. The removal of the court's presumption that a public land was agricultural was succinctly discussed in *Yap*, citing *Vda. De Planca*:

Petitioner's reliance upon *Ramos v. Director of Lands* and *Ankron v. Government* is misplaced. These cases were decided under the Philippine Bill of 1902 and the first Public Land Act No. 926 enacted by the Philippine Commission on October 7, 1926, under which there was no legal provision vesting in the Chief Executive or President of the Philippines the power to classify lands of the public domain into mineral, timber and agricultural so that the courts then were free to make corresponding classifications in justiciable cases, or were vested with implicit power to do so, depending upon the preponderance of the evidence.

To aid the courts in resolving land registration cases under Act No. 926, it was then necessary to devise a presumption on land classification. Thus, evolved the dictum in *Ankron* that "the courts have a right to presume, in the absence of evidence to the contrary, that in each case the lands are agricultural lands until the contrary is shown."

But We cannot unduly expand the presumption in *Ankron* and *De Aldecoa* to an argument that all lands of the public domain had been automatically reclassified as disposable and alienable agricultural lands. By no stretch of imagination did the presumption convert all lands of the public domain into agricultural lands.

If We accept the position of private claimants, the Philippine Bill of 1902 and Act No. 926 would have automatically made all lands in the Philippines, except those already classified as timber or mineral land, alienable and disposable lands. That would take these lands out of State ownership and worse, would be utterly inconsistent with and totally repugnant to the long-entrenched Regalian Doctrine.

x x x x

Since 1919, courts were no longer free to determine the classification of lands from the facts of each case, except those that have already become private lands. Act No. 2874, promulgated in 1919 and reproduced in [Sec] 6 of [C.A.] No. 141, gave the Executive Department, through the President, the exclusive prerogative to classify or reclassify public lands into alienable or disposable, mineral or forest. Since then, courts no longer had the authority, whether express or implied, to determine the classification of lands of the public domain.[26]

The 1935 Constitution embodied the Regalian Doctrine, to wit:

ARTICLE XII.

Conservation and Utilization of Natural Resources

SECTION 1. All agricultural timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than

the development of water power, in which cases beneficial use may be the measure and limit of the grant.[27] (emphasis supplied)

Similarly, the 1973 Constitution reiterated the Regalian Doctrine that all lands of public domain belong to the State:

ARTICLE XIV

The National Economy and the Patrimony of the Nation

x x x x

SECTION 8. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, wildlife, and other natural resources of the Philippines belong to the State. With the exception of agricultural, industrial or commercial, residential, and resettlement lands of the public domain, natural resources shall not be alienated, and no license, concession, or lease for the exploration, development, exploitation, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for not more than twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases, beneficial use may be the measure and the limit of the grant.[28] (emphasis supplied)

The 1987 Constitution also stated the Regalian Doctrine:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated.
x x x[29]

In 1975, P.D. No. 705 was enacted and Sec. 3(a) thereof essentially stated that lands of the public domain which have not been the subject of the present system of classification are considered as forest land. Verily, this provision is consistent with the Regalian Doctrine. Lands of public domain are, by default, owned by the State. The only classification of land that may be subject to private ownership would be agricultural lands that are classified as alienable and disposable lands. Forest and mineral lands cannot be the subject of private ownership. Thus, Sec. 3(a) merely reiterates that unclassified lands are in the same footing as forest lands because these belong to the State; these are not alienable and disposable land of public domain; and these are not subject to private ownership.

However, it must be emphasized that even without Sec. 3(a), which declared that unclassified lands are considered as forest lands, the exact same result shall apply - unclassified lands are still not subject to private ownership because they belong to the State and are not alienable and disposable lands of public domain.

In *Director of Lands v. Intermediate Appellate Court*,[30] the Court explained that when a land of public domain is unclassified, it cannot be released and rendered open for private disposition pursuant to the Regalian Doctrine and that the private applicant in a land registration case has the burden of proof to overcome State ownership of the lands of public domain, to wit:

Lands of the public domain are classified under three main categories, namely: Mineral, Forest and Disposable or Alienable Lands. Under the Commonwealth Constitution, only agricultural lands were allowed to be alienated. Their disposition was provided for under [C.A.] Act No. 141 (Secs. 6-7), which states that it is only the President, upon the recommendation of the proper department head, who has the authority to classify the lands of the public domain into alienable or disposable, timber and mineral lands. Mineral and Timber or forest lands are not subject to private ownership unless they are first reclassified as agricultural lands and so released

for alienation. In the absence of such classification, the land remains as unclassified land until released therefrom and rendered open to disposition. Courts have no authority to do so.

This is in consonance with the Regalian Doctrine that all lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership in land and charged with the conservation of such patrimony. Under the Regalian Doctrine, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. Hence, a positive act of the government is needed to declassify a forest land into alienable or disposable land for agricultural or other purposes.

The burden of proof in overcoming the presumption of state ownership of the lands of the public domain is on the person applying for registration that the land subject of the application is alienable or disposable.[31]

Similarly, in *Manalo v. Intermediate Appellate Court*,[32] it was held that when the land is unclassified, it shall not be subject to disposition pursuant to the Regalian Doctrine that all lands of public domain belong to the State, viz.:

In effect, what the Court a quo has done is to release the subject property from the unclassified category, which is beyond their competence and jurisdiction. The classification of public lands is an exclusive prerogative of the Executive Department of the Government and not of the Courts. In the absence of such classification, the land remains as unclassified land until it is released therefrom and rendered open to disposition (Sec. 8, [C.A.] No. 141, as amended: *Yngson v. Secretary of Agriculture and Natural Resources*, 123 SCRA 441 [1993]; *Republic v. Court of Appeals*, 99 SCRA 742 [1980]). This should be so under time-honored Constitutional precepts. This is also in consonance with the Regalian Doctrine that all lands of the public domain belong to the State (Secs. 8 & 10, Art. XIV, 1973 Constitution), and that the State is the source of any asserted right to ownership in land and charged with the conservation of such patrimony (*Republic v. Court of Appeals*, 89 SCRA 648 [1979]).[33]

Indeed, under the Regalian Doctrine, all lands of the public domain belong to the State, which is the source of any asserted right to any ownership of land. All lands not appearing to be clearly within private ownership are presumed to belong to the State. Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land or alienated to a private person by the State remain part of the inalienable public domain.[34]

The argument of petitioners that Sec. 3(a) of P.D. 705 is unconstitutional because unclassified lands of public domain should instead be treated as agricultural land, subject to private disposition, is utterly baseless. The said provision is consistent with the Constitutional mandate of the Regalian Doctrine that lands of public domain, whether unclassified, forest, or mineral lands, remain within the ownership of the State and shall not be subject to alienation or disposition of private persons.[35] Absent any positive act of the government to classify a land of public domain into alienable or disposable land for agricultural or other purposes, it remains with the State.[36]

Forest lands; No private rights violated

Finally, petitioners argue that only those lands with trees and timber should be considered as forest land, and the rest should be considered as public agricultural land.

The argument fails.

Even if an island or a parcel of land has already been stripped of its forest cover, it does not negate its character as public forest. Forests, in the context of both the Public Land Act and the Constitution classifying lands of the public domain into "agricultural, forest or timber, mineral lands, and national parks", do not necessarily refer to large tracts of wooded land or expanses covered by dense growths of trees and underbrushes.[37]

A forested area classified as forest land of the public domain does not lose such classification simply because loggers or settlers may have stripped it of its forest cover. Parcels of land classified as forest land may actually be covered with grass or planted to crops by kaingin cultivators or other farmers. "Forest lands" do not have to be on mountains or in out of the way places. Swampy areas covered by mangrove trees, nipa palms, and other trees growing in brackish or sea water may also be classified as forest land. The classification is descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like. Unless and until the land classified as "forest" is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain, the rules on confirmation of imperfect title do not apply.[38]

To reiterate, even if the subject lands are unclassified, these are still not subject to private ownership. In *Republic v. Heirs of Daquer*,[39] the Court stated:

While it is true that the land classification map does not categorically state that the islands are public forests, the fact that they were unclassified lands leads to the same result. In the absence of the classification as mineral or timber land, the land remains unclassified land until released and rendered open to disposition. When the property is still unclassified, whatever possession applicants may have had, and however long, still cannot ripen into private ownership. This is because, pursuant to Constitutional precepts, all lands of the public domain belong to the State, and the State is the source of any asserted right to ownership in such lands and is charged with the conservation of such patrimony. Thus, the Court has emphasized the need to show in registration proceedings that the government, through a positive act, has declassified inalienable public land into disposable land for agricultural or other purposes.[40] (emphasis supplied)

To subscribe to the view of petitioners - that unclassified lands should be presumed as disposable land, and not a forest land - would run afoul to the Regalian Doctrine. Any person could simply declare that a parcel of land of public domain is alienable and disposable by the mere fact that it is not covered by trees. The recognized system of classification of lands by the State would be destroyed and conflicting classifications of lands of public domain would arise. Indeed, the better approach is to uphold Sec. 3(a) of P.D. No. 705 because it is consistent with the Regalian Doctrine that all lands of public domain belongs to the State.

In *Republic v. Heirs of Sin*,[41] the Court underscored that there must be a positive act from the Government before a land of public domain can be considered as alienable and disposable land of public domain:

Under the Regalian Doctrine, which is embodied in our Constitution, all lands of the public domain belong to the State, which is the source of any asserted right to any ownership of land. All lands not appearing to be clearly within private ownership are presumed to belong to the State. Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land or alienated to a private person by the State remain part of the inalienable public domain. Unless public land is shown to have been reclassified as alienable or disposable to a private person by the State, it remains part of the inalienable public domain. Property of the public domain is beyond the commerce of man and not susceptible of private appropriation and acquisitive prescription. Occupation thereof in the concept of owner no matter how long cannot ripen into ownership and be registered as a title. The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration (or claiming ownership), who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, incontrovertible evidence must be established that the land subject of the application (or claim) is alienable or disposable.

There must be a positive act declaring land of the public domain as alienable and disposable. To prove that the land subject of an application for registration is alienable, the applicant must establish the existence of a positive act of the government, such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute. The applicant may also secure a certification from the government that the land claimed to have been possessed for the required number of years is alienable and disposable.[42] (emphasis supplied)

In effect, as petitioners failed to assail Sec. 3(a) of P.D. No. 705, which is consistent with the Regalian Doctrine, wherein the subject lands remain within the ownership of the State. To repeat, the burden of proof in overcoming the presumption of state ownership of the lands of the public domain is on the person applying for registration that the land subject of the application is alienable or disposable. Unless public land is shown to have been reclassified as alienable or disposable to a private person by the State, it remains part of the inalienable public domain. Property of the public domain is beyond the commerce of man and not susceptible of private appropriation and acquisitive prescription. Occupation thereof in the concept of owner no matter how long cannot ripen into ownership and be registered as a title.[43] In other words, petitioners have no vested right over the subject lands because these unclassified lands belong to the State, hence, no private right was violated by the State.

Verily, Sec. 3(a) of P.D. No. 705 is not unconstitutional because it merely enforces the Regalian Doctrine in favor of the State. No amount of possession will expose the subject lands to private ownership. Petitioners should not seek to devoid the said statutory provision; instead, they should proceed to the Executive Department, through the Secretary of DENR, to establish that the subject unclassified forest lands must be re-classified to alienable and disposable lands of public domain.[44] Only when the lands of public domain are classified as alienable or disposable, may petitioners assert their property rights over the subject lands.

Remedy is beyond the courts

Assuming that petitioners have indeed been tilling the subject lands, which they eventually discovered to be unclassified forest lands of public domain, hence, non-registrable, the Court commiserates with their predicament. It is distressing for a farmer to physically possess and till a parcel of land for decades, or even generations, only to discover that it is not subject to disposition and alienation simply because it is an unclassified land or a forest land of public domain. However, as thoroughly discussed-above, the assailed provision Sec. 3(a) of P.D. No. 705 is constitutional because it is consistent with the Regalian Doctrine. In such a case, the farmer must undergo the tedious process for the reclassification of land to be alienable and disposable; the authority to reclassify is lodged with the central executive government. It is settled that the declaration of alienability must be through executive fiat, as exercised by the Secretary of the DENR.[45] As the centralized process may be beyond the farmer's reach and means, the land ultimately remains untitled.

Notably, as the Court painstakingly discussed in *Heirs of Malabanan v. Republic*[46] the difficulty arising from the classification of land is attributable to the policy of the law itself:

A final word. The Court is comfortable with the correctness of the legal doctrines established in this decision. Nonetheless, discomfiture over the implications of today's ruling cannot be discounted. For, every untitled property that is occupied in the country will be affected by this ruling. The social implications cannot be dismissed lightly, and the Court would be abdicating its social responsibility to the Filipino people if we simply levied the law without comment.

The informal settlement of public lands, whether declared alienable or not, is a phenomenon tied to long-standing habit and cultural acquiescence, and is common among the so-called "Third World" countries. This paradigm powerfully evokes the disconnect between a legal system and the reality on the ground. The law so far has been unable to bridge that gap. Alternative means of acquisition of these public domain lands, such as through homestead or free patent, have proven unattractive due to limitations imposed on the grantee in the encumbrance or alienation of said properties. Judicial confirmation of imperfect title has emerged as the most viable, if not the most attractive means to regularize the informal settlement of alienable or disposable lands of the public domain, yet even that system, as revealed in this decision, has considerable limits.

There are millions upon millions of Filipinos who have individually or exclusively held residential lands on which they have lived and raised their families. Many more have tilled and made productive idle lands of the

State with their hands. They have been regarded for generation by their families and their communities as common law owners. There is much to be said about the virtues of according them legitimate states. Yet such virtues are not for the Court to translate into positive law, as the law itself considered such lands as property of the public dominion. It could only be up to Congress to set forth a new phase of land reform to sensibly regularize and formalize the settlement of such lands which in legal theory are lands of the public domain before the problem becomes insoluble. This could be accomplished, to cite two examples, by liberalizing the standards for judicial confirmation of imperfect title, or amending the Civil Code itself to ease the requisites for the conversion of public dominion property into patrimonial.

One's sense of security over land rights infuses into every aspect of well-being not only of that individual, but also to the person's family. Once that sense of security is deprived, life and livelihood are put on stasis. It is for the political branches to bring welcome closure to the long pestering problem.[47]

C.A. No. 141 could be improved with respect to manner and method of classifying land. Instead of giving the President, through his alter ego the Secretary of DENR, the sole power to classify lands of public domain, this authority could be decentralized and simplified so that the masses, especially the farmers of the far-flung provinces, would not have to rely on the central executive government in order to secure a title in their land. Of course, decentralization of the governmental functions has both positive and negative impact on State regulation, which must be thoroughly studied and deliberated by policy-makers.

In any case, the remedy that petitioners seek is definitely beyond the powers of the Court; Rather, it is matter of policy that must be addressed by the other branches of government. Indeed, the question of wisdom of the law is beyond the province of this Court to inquire. An inquiry of that sort amounts to a derogation of the principle of separation of powers.[48]

WHEREFORE, the petition is DISMISSED.

Let copies of this Resolution be furnished to the Senate President and the Speaker of the House of Representatives for possible consideration of the amendment of Commonwealth Act No. 141 and other related laws for the decentralization of the authority and simplification of the process to classify lands of public domain.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, Gaerlan, and Baltazar-Padilla, JJ., concur.

[1] Rollo, p. 6

[2] Id.

[3] Id.

[4] Id. at 6-7.

[5] Id. at 7.

[6] Id. at 85-101.

[7] Id. at 104-154

[8] Cawaling, Jr. v. Commission on Elections, 420 Phil. 524, 530-531 (2001); citations omitted.

[9] City of Cagayan De Oro v. Cagayan Electric Power & Light Co., Inc., G.R. No. 224825, October 17, 2018.

- [10] Mayor Rama v. Judge Moises, 802 Phil. 29, 48 (2016); citation omitted.
- [11] Automotive Industry Workers Alliance v. Hon. Romulo, 489 Phil. 710, 718 (2005); citations omitted.
- [12] Galicto v. H.E. President Aquino III, 683 Phil. 141, 170-171 (2012).
- [13] Rollo, pp. 90-91.
- [14] 531 Phil. 602 (2006).
- [15] 589 Phil. 156 (2008).
- [16] Heirs of Malabanan v. Republic, 717 Phil. 141, 160 (2013); citations omitted.
- [17] See Agcaoili, Oswaldo D., Property Registration Decree and Related Laws, 2015 edition, p. 7.

[18] 212 U.S. 449 (1909).

- [19] Id.
- [20] G.R. No. 216999, July 4, 2018, 870 SCRA 575; citations omitted.
- [21] Id. at 587-588; citations omitted: emphasis in the original.
- [22] SECTION 1. That the action of the President of the United States in creating the Philippine Commission and authorizing said Commission to exercise the powers of government to the extent and in the manner and form and subject to the regulation and control set forth in the instructions of the President to the Philippine Commission, dated April seventh, nineteen hundred, and in creating the offices of Civil Governor and Vice-Governor of the Philippine Islands, and authorizing said Civil Governor and Vice-Governor to exercise the powers of government to the extent and in the manner and form set forth in the Executive Order dated June twenty-first, nineteen hundred and one, and in establishing four Executive Departments of government in said Islands as set forth in the Act of the Philippine Commission, entitled "An Act providing an organization for the Departments of the Interior, of Commerce and Police, of Finance and Justice, and of Public Instruction," enacted September sixth, nineteen hundred and one, is hereby approved, ratified, and confirmed, and until otherwise provided by law the said Islands shall continue to be governed as thereby and herein provided, and all laws passed hereafter by the Philippine Commission shall have an enacting clause as follows."By authority of the United States, be it enacted by the Philippine Commission." The provisions of section eighteen hundred and ninety-one of the Revised Statutes of eighteen hundred and seventy-eight shall not apply to the Philippine Islands. Future appointments of Civil Governor, Vice-Governor, members of said Commission and heads of Executive Departments shall be made by the President, by and with the advice and consent of the Senate.
- [23] 39 Phil. 175 (1918).
- [24] 40 Phil. 10 (1919).
- [25] Enacted on November 29, 1919.
- [26] Supra note 15 at 185-187; citations omitted; emphases supplied.
- [27] Section 1, Article XII, 1935 Constitution.
- [28] Section 8, Article XIV, 1973 Constitution.
- [29] Section 2, Article XII, 1987 Constitution.

[30] 292 Phil. 341 (1993)

[31] Id. at 349-350; citations omitted.

[32] 254 Phil. 799 (1989), citing Republic v. Intermediate Appellate Court, 239 Phil. 393 (1987)

[33] Id. at 805-806.

[34] Heirs of Gozo v. Philippine Union Mission Corp. of the Seventh Day Adventist Church, 765 Phil. 829, 838 (2015); citation omitted.

[35] See Republic v. Spouses Alonso, G.R. No. 210738, August 14, 2019.

[36] See Republic v. Heirs of Daquer, G.R. No. 193657, September 4, 2018.

[37] Id.

[38] Heirs of Amunategui v. Director of Forestry, 211 Phil. 260, 265 (1983); emphasis supplied.

[39] Supra note 36.

[40] Id.

[41] 730 Phil. 414 (2014).

[42] Id. at 423-424.

[43] Republic v. Abarca, G.R. No. 217703, October 9, 2019.

[44] Section 6 of Commonwealth Act No. 141 states that the President, upon the recommendation of the Secretary of Agriculture and Commerce, shall from time to time classify the lands of the public domain into —

- (a) Alienable or disposable;
- (b) Timber, and
- (c) Mineral lands,

and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their administration and disposition.

[45] Republic v. Spouses Noval, 818 Phil. 298, 316 (2017).

[46] 605 Phil. 244 (2009).

[47] Id. at 286-288; citation omitted.

[48] Atitiw v. Zamora, 508 Phil. 321, 341 (2005).

CONCURRING OPINION

LEONEN, J.:

Petitioners are federations of farmers in Coron and Busuanga, Palawan, whose lands were placed under the coverage of the Comprehensive Agrarian Reform Program. They allege that since 1960, they had been tilling and occupying the parcels of land registered under the Mercury Group of Companies and Jose Sandoval.[1]

However, the Department of Agrarian Reform discontinued the land distribution after the Department of Environment and Natural Resources had claimed that the land was an unclassified forest under Section 3(a) of Presidential Decree No. 705.[2]

This Petition[3] assails the constitutionality of Section 3(a) of Presidential Decree No. 705. The provision reads:

SECTION 3. Definitions.

(a)

Public forest is the mass of lands of the public domain which has not been the subject of the present system of classification for the determination of which lands are needed for forest purposes and which are not.[4]

First, petitioners aver that the declaration of all unclassified public lands as public forests contravenes the Constitution.[5] They argue that past and present constitutions have consistently classified public lands depending on their character.[6] They contend that Section 3(a) of Presidential Decree No. 705 violates this constitutional prescription because it automatically converts all public lands as forest land.[7]

Second, petitioners contend that the provision violates due process because it is an undue deprivation of property.[8] They argue that under Act No. 926, the first Public Land Act, all public agricultural lands possessed since July 26, 1894 were converted into private lands.[9] Pursuant to this law, an occupant-owner can apply for judicial confirmation of imperfect title or free patent under Act No. 2874 and Commonwealth Act No. 141 without prior declaration that the land is alienable and disposable.[10] Through this process, ownership is not acquired but merely confirmed.[11]

Petitioners further argue that Presidential Decree No. 705 disregarded vested ownership when it required prior classification of land as alienable and disposable for the purposes of prescription or confirmation of title.[12] By classifying all public lands as forests, the law effectively declares as inalienable lands that have been declared as agricultural under the 1935, 1973, and 1987 Constitutions.[13]

Petitioners further lament the disconnect between the law and the actual classifications of land, claiming that under Section 3 (a) of Presidential Decree No. 705, all unclassified lands were automatically reclassified as forests regardless of their nature. They point out that with the current law, there are urbanized lands without trees but are still considered forests.[14]

In their Comment,[15] respondents claim that petitioners do not have the legal standing to file the Petition as they have failed to show that they sustained any real injury.[16]

Respondents also maintain that Section 3(a) of Presidential Decree No. 705 is not unconstitutional because it is consistent with the Constitution and the regalian doctrine.[17] They assert that petitioners are mistaken in their interpretation of Philippine Bill of 1902 and Act No. 926 because there is no presumption that all public lands are converted to agricultural lands under Act No. 926. The law merely laid down how land registration courts should classify public domain lands. Ultimately, they maintain, classification still depends on the proof presented.[18]

Respondents argue that pursuant to the regalian doctrine and Article XII, Section 2 of the 1987 Constitution, all lands of public domain are owned by the State.[19] They assert that Section 3(a) of Presidential Decree No. 705 merely echoes this recognition in categorizing all unclassified lands of public domain as public forests.[20]

Respondents further dispute petitioners' claim that Section 3(a) is an undue deprivation of property. Considering that there was no automatic classification of lands as agricultural lands, they claim that the unclassified lands remained part of the public domain and no property right on these lands was vested upon their occupants.[21]

In their Reply,[22] petitioners assert that they have the legal standing to file the Petition because their property rights are affected by Presidential Decree No. 705.[23] Moreover, they claim that their Petition raises an issue of transcendental importance because it is bound to affect Filipinos who have occupied and tilled lands for generations.[24]

Petitioners reiterate that before Presidential Decree No. 705 took effect, there was no requirement that agricultural lands first be declared alienable and disposable before being registered under Commonwealth Act No. 141.[25] They point out that public agricultural lands are lands acquired from Spain that are neither timber nor mineral in nature and these lands are alienable; hence, they are no longer subject to presidential or congressional declaration of alienability.[26] The presumption that the land is agricultural still holds true. The government can make a forest reservation on public agricultural lands but subject to prior vested rights.[27]

Petitioners add that that this presumption is consistent with Article 421 of the Civil Code. Under this provision, there is no need for a prior declaration of alienability or manifestation that a public agricultural land is not intended for public use or service for it to be considered patrimonial property of the State.[28] Rather, they say that the property is presumed patrimonial, and the State bears the burden to declare that the land is intended for public service or use for it to become part of public dominion.[29]

Petitioners further aver that under Sections 32 and 54 of Act No. 926, public agricultural lands were not only considered alienable, but deemed alienated as they were opened to homestead, sale, or lease application.[30] Such lands will only be withdrawn from disposition after the declaration that they are non-alienable.[31] Moreover, the requirement of declaration of alienability only applied to reclassification of forest to agricultural lands.[32]

Petitioners point out that since *Cariño v. Insular Government*,[33] jurisprudence has held that public agricultural land may be automatically converted to private property by prescription.[34] Section 3(a) of Presidential Decree No. 705 is, in effect, a State-sponsored grabbing of agricultural land whose ownership is already vested on its occupants.[35]

Lastly, petitioners argue that Section 3(a) renders the Comprehensive Agrarian Reform Program useless,[36] as it automatically converts all unclassified lands into forest lands, which cannot be covered by agrarian reform.[37]

The ponencia dismissed the Petition. First, it held that petitioners have no legal standing to file the Petition because they failed to show real and actual injury.[38]

Second, the ponencia reasons that "unclassified land[s] cannot be considered alienable and disposable land of public domain pursuant to the Regalian doctrine." [39] It maintains that there is no presumption that a land of public domain is agricultural. The Constitution and the laws merely allowed the government to classify lands of public domain.[40]

According to the ponencia, while Section 3(a) of Presidential Decree No. 705 indeed declared unclassified lands of public domain as forests, it is not unconstitutional because it is in accord with the regalian doctrine, which the ponencia says is incorporated in the Constitution.[41] It adds that Section 3(a) "merely reiterates that unclassified lands are in the same footing as forest lands because these belong to the State; these are not alienable and disposable land of public domain; and these are not subject to private ownership." [42] Even without this provision, the ponencia maintains that "unclassified lands are still not subject to private ownership because they belong to the State and are not alienable and disposable lands of public domain." [43]

To the ponencia, petitioners' view that unclassified lands are presumed disposable violates the regalian doctrine. As settled by this Court, for a land to be considered alienable and disposable land of public domain, there must be a positive act from the government.[44] Until then, the land remains part of the public domain and its occupation

cannot ripen into ownership.[45]

Third, the ponencia held the classification of a land as forest does not refer to its actual nature, but is only a legal description. Hence, even if a parcel of land no longer has forest cover, it may still be classified as a public forest under the law.[46]

The ponencia concludes that the issue presented by petitioners is a question of policy—a matter beyond the jurisdiction of this Court.

Let me express a few points.

The regalian doctrine, while often repeated in our jurisprudence, is a legal fiction that has no clear constitutional mooring. It presumes that all lands are public based on the premise that the State's land ownership was passed down from the Spanish Crown. However, this concept is not textually expressed in our Constitution. Article XII, Section 2 of the 1987 Constitution only states that all lands of public domain are owned by the State, but nowhere does it provide that all unclassified and untitled lands are presumed public lands.

Thus, lands shall not be presumed as part of the public domain and shall remain as such unless the State reclassifies them as alienable.[47] Jurisprudence since *Cariño*[48] has acknowledged that there are lands that have never become part of the public domain, even if they are found untitled and unregistered.

Further, Section 15 of the Presidential Decree No. 705 must be declared unconstitutional because it violates due process. It declares all unclassified lands as forests without regard to lands whose ownership are already vested upon its occupants.

The definition of public forest in Section 3(a) must be read in conjunction with Section 15, which uses a single criterion in determining in classifying lands. Using the land's slope as the sole factor in classifying land as forest or as timber land is patently arbitrary.

I

In the precolonial era, land ownership in the Philippines was communal in nature.[49] Land titles were vested not to natural persons but to the communal barangay.[50]

When the Spaniards came, the recognition of property rights transitioned to individual ownership and the titling of land was introduced. While communal ownership was still acknowledged, only individual ownership and rights were deemed alienable and were allowed documentation and registration.[51] Royal decrees allowed for the titling of lands when "long and continuous possession" was shown.[52]

Claimants then had to prove tradition and submit witness depositions. Alleging that this process caused controversy, the Spanish government required all landowners to obtain official documentation of their ownership.[53] In 1893, the Spanish Mortgage Law put in place a systematic registration of titles.[54] However, due to government officials' abuses, lack of effective notice, illiteracy, and the costs of registration, land ownership registration became inaccessible to a large majority of natives, who could "only show their title by actual possession." [55] In an attempt to address this problem, a unilateral registration deadline was imposed through the Maura Law of 1894—the law that presaged the regalian doctrine.[56]

As provided in its preamble, the Maura Law sought to "insure to the natives, in the future, whenever it may be possible, the necessarily land for cultivation, in accordance with traditional usages." However, this policy is contradicted by Article 4 of the law, which stated that lands not titled will "revert back to the State." The provision further stated that "[a]ny claim to such lands by those who might have applied for adjustment of the

same but have not done so [on April 17, 1895], will not avail themselves in any way nor at any time." [57] With the Maura Law in place, the recognition of customary land rights was effectively denied. [58] It introduced a legal concept that presumed all undocumented lands as owned by the Spanish Crown and its successors. [59]

This policy was cemented in the 1898 Treaty of Paris, which expressly stated that "all immovable properties . . . belong to the Crown of Spain and were to be ceded and relinquished to the new colonial master." [60] It was also textually reflected in the Philippine Bill of 1902. Section 12 stated:

SECTION 12. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety- eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are hereby placed under the control of the Government of said Islands, to be administered for the benefit of the inhabitants thereof, except as provided in this Act. [61] (Emphasis supplied)

In the 1904 case of *Valenton v. Murciano*, [62] the regalian doctrine was first introduced in our jurisprudence. In *Valenton*, claimants alleged ownership over a parcel of untitled public land based on adverse possession for over 30 years, counting from 1860 until they filed the case in 1890. In dismissing the case, this Court ruled that there was no right of prescription against the State as to public lands. It explained:

It happened, in the course of time, that tracts of the public land were found in the possession of persons who either had no title papers therefor issued by the State, or whose title papers were defective, either because the proper procedure had not been followed or because they had been issued by persons who had no authority to do so. Law 14, title 12, book 4 of said compilation (referred to in the regulations of June 25, 1880, for the Philippines) was the first of a long series of legislative acts intended to compel those in possession of the public lands, without written evidence of title, or with defective title papers, to present evidence as to their possession or grants, and obtain the confirmation of their claim to ownership. . . .

. . . .

While the State has always recognized the right of the occupant to a deed if he proves a possession for a sufficient length of time, yet it has always insisted that he must make that proof before the proper administrative officers, and obtain from them his deed, and until he did that the State remained the absolute owner.

In the preamble of this law there is, as is seen, a distinct statement that all those lands belong to the Crown which have not been granted by Philip, or in his name, or by the kings who preceded him. This statement excludes the idea that there might be lands not so granted, that did not belong to the king. It excludes the idea that the king was not still the owner of all ungranted lands, because some private person had been in the adverse occupation of them. By the mandatory part of the law all the occupants of the public lands are required to produce before the authorities named, and within a time to be fixed by them, their title papers. And those who had good title or showed prescription were to be protected in their holdings. It is apparent that it was not the intention of the law that mere possession for a length of time should make the possessors the owners of the lands possessed by them without any action on the part of the authorities. It is plain that they were required to present their claims to the authorities and obtain a confirmation thereof. What the period of prescription mentioned in this law was does not appear, but later, in 1646, law 19 of the same title declared "that no one shall be 'admitted to adjustment' unless he has possessed the lands for ten years." [63] (Emphasis supplied)

Nevertheless, the 1909 case of *Cariño v. Insular Government* [64] rectified this doctrine and held that not all lands are presumed part of public domain.

In *Cariño*, Mateo Cariño claimed that he and his ancestors had occupied and tilled a land in Benguet since time

immemorial, one he had inherited the land in accordance with Igorot custom. He said that the land was not titled pursuant to the Spanish royal decrees despite his application in 1893 to 1894 and 1896 to 1897. Thus, in 1902, Cariño applied for ownership, though he could only show a possessory title.[65]

His petition before the Court of Land Registration was approved, but this was reversed on appeal before the Benguet Court of First Instance. When the case reached the Philippine Supreme Court in 1906, the ruling was affirmed. Citing Article 4 of the Maura Law, the Court reasoned that Cariño could no longer assert ownership over the land after he had failed to have it registered within the period set in the law.[66]

Upon appeal, the United States Supreme Court ruled in favor of Cariño. It held that the United States was not bound to assert the same powers held by its predecessor, and the government must respect the rights under the laws of the United States, including due process rights, granted in favor of Cariño.[67] Thus:

If we suppose for the moment that the government's contention is so far correct that the Crown of Spain in form asserted a title to this land at the date of the Treaty of Paris, to which the United States succeeded, it is not to be assumed without argument that the plaintiffs case is at an end. It is true that Spain, in its earlier decrees, embodied the universal feudal theory that all lands were held from the Crown, and perhaps the general attitude of conquering nations toward people not recognized as entitled to the treatment accorded to those in the same zone of civilization with themselves. It is true, also, that, in legal theory, sovereignty is absolute, and that, as against foreign nations, the United States may assert, as Spain asserted, absolute power. But it does not follow that, as against the inhabitants of the Philippines, the United States asserts that Spain had such power. When theory is left on one side, sovereignty is a question of strength, and may vary in degree. How far a new sovereign shall insist upon the theoretical relation of the subjects to the head in the past, and how far it shall recognize actual facts, are matters for it to decide.

The Province of Benguet was inhabited by a tribe that the Solicitor- General, in his argument, characterized as a savage tribe that never was brought under the civil or military government of the Spanish Crown. It seems probable, if not certain, that the Spanish officials would not have granted to anyone in that province the registration to which formerly the plaintiff was entitled by the Spanish laws, and which would have made his title beyond question good. Whatever may have been the technical position of Spain it does not follow that, in the view of the United States, he had lost all rights and was a mere trespasser when the present government seized his land. The argument to that effect seems to amount to a denial of native titles throughout an important part of the Island of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce.[68]

The United States Supreme Court explained that under the Philippine Bill of 1902, "all the property and rights acquired there by the United States are to be administered 'for the benefit of the inhabitants thereof.'"[69] It added that the same charter likewise guarded against undue deprivation of property. Taking these into consideration, the United States Supreme Court held that due process rightfully extended to unregistered and untitled properties whose owners presumably have not heard and availed of the registration processes. In the same vein, the charter did not consider as part of public domain lands held "by native custom and by long association." [70]

Cariño further pointed out that the presumption ought to be against the State. Thus, in cases where the land in question has been held since time immemorial, it must be presumed to have been held in private ownership before the Spanish occupation and never to have been public land. The United States Supreme Court held:

Whatever the law upon these points may be, and we mean to go no further than the necessities of decision demand, every presumption is and ought to be against the government in a case like the present. It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land. Certainly in a case like this, if there is

doubt or ambiguity in the Spanish law, we ought to give the applicant the benefit of the doubt. Whether justice to the natives and the import of the Organic Act ought not to carry us beyond a subtle examination of ancient texts, or perhaps even beyond the attitudes of Spanish law, humane though it was, it is unnecessary to decide. If, in a tacit way, it was assumed that the wild tribes of the Philippines were to be dealt with as the power and inclination of the conqueror might dictate, Congress has not yet sanctioned the same course as the proper one "for the benefit of the inhabitants thereof." [71]

Cariño does not only embrace ancestral land rights, but it applies to all people who have held land since time immemorial.

The ruling establishes two important doctrines. First, it affirms the people's constitutional right over the land since time immemorial; and second, it settles that the Spanish colonial concept of regalian doctrine did not extend to the American occupation and to the subsequent organic acts enacted. Cariño concludes that the Maura Law "should not be construed as confiscation, but as the withdrawal of a privilege" [72] to register a title.

In 1903, Act No. 926, otherwise known as the Public Land Act, mandated the expropriation of "unoccupied, unreserved, unappropriated agricultural public land" through homestead. [73] It continued to require registration and titling of land ownership, but it also provided a presumption in favor of persons who have openly, continuously, exclusively, and notoriously possessed and occupied agricultural public lands. Section 54(6) of Act No. 926 states:

6. All persons who by themselves or their predecessors in interest has 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.

Similar to Cariño, the Public Land Act provides for judicial confirmation in affirming the native title claims. However, unlike Cariño, the Public Land Act no longer demands a claim of ownership based on occupation "since time immemorial." Rather, it only requires possession and occupation for a specified number of years. [74]

This provision was reiterated in Section 44 of Commonwealth Act No. 141, which grants free patents to citizens who do not own more than 24 hectares of land and have "continuously occupied and cultivated . . . agricultural public lands" since July 4, 1955. [75]

This provision was central in the 1980 case of *Herico v. Dar*. [76] In *Herico*, this Court ruled that upon compliance with the provision, the possessor acquires a right to a grant even without a certificate of title. As a result, the land is acknowledged as privately owned, withdrawn from the public domain.

In 1956, a free patent was granted to respondent Cipriano Dar (Dar) after claiming that he has possessed and cultivated a parcel of land since 1922. According to a report of a Public Land Inspector, nobody else claimed the land and Dar cultivated around 8.6 hectares of land, introducing 700 coconut trees ranging from 20 to 30 years. Subsequently, petitioner Moises Herico (Herico) filed a complaint seeking the cancellation of Dar's title, which was granted by the Court of First Instance. This was reversed by the Court of Appeals.

Upon appeal, this Court reversed the appellate court's decision. It found that Herico's predecessors-in-interest possessed the land way back in 1914 and declared the land for taxation purposes in 1940—earlier than Dar's tax declaration in 1952. It ruled that under Republic Act No. 1942, the law amending Commonwealth Act No. 141, Herico's occupation and cultivation for more than 30 years since 1914 has vested on him title over the land. The

land, then, has been effectively withdrawn from public dominion. This Court expounded:

As interpreted in several cases when the conditions as specified in the foregoing provision are complied with, the possessor is deemed to have acquired, by operation of law, a right to a grant, a government grant, without the necessity of a certificate of title being issued. The land, therefore, ceases to be of the public domain, and beyond the authority of the Director of Lands to dispose of. The application for confirmation is a mere formality, the lack of which does not affect the legal sufficiency of the title as would be evidenced by the patent and the Torrens title to be issued upon the strength of said patent.[77] (Citation omitted)

The judicial confirmation of title under Section 48(b) of Commonwealth Act No. 141 was later amended by Republic Act No. 1942. It dispensed with the requirement of possession beginning not later than July 26, 1984, removed the phrase "except as against the Government," and qualified the possession "under a bona fide claim of acquisition of ownership." [78]

Cariño and Herico affirm that ownership claims based on long occupation and possession of land are still recognized in our system. They recognize that not all untitled lands are automatically deemed part of the public domain and that there is no absolute presumption that all lands are presumed public lands. The due process clause, present from Philippine Bill of 1902 to the present Constitution, respects acquired ownership of land, whether or not ownership is confirmed by a title.

Thus, I agree with the ponencia that a "native title to land, or ownership of land by Filipinos by virtue of a claim of ownership since time immemorial and independent of any grant from the Spanish Crown[,] "[79] is an exception to the regalian doctrine.

This pronouncement not only affirms the validity of a native title, but also shows respect and sensitivity by doing away with the reference to "indigenous" or the pejorative "tribal," which is astute and prescient.

We are all natives in relation to our ancestral properties. The distinction of tribal or indigenous was introduced by our colonizers to convince their metropolis that there were "civilized" and "uncivilized" among us. Through their many laws, they favored ethnolinguistic groups, such as Tagalogs and Ilocanos, that easily succumbed to their rule and painfully marginalized indigenous groups through the legal order, suggesting that they are weak and uncivilized.[80]

The distinction was a political device employed by the Spanish colonizers who labeled as "uncivilized" Filipinos who refused to identify as Christians, and as "civilized" those who were converted and who were subservient to the Spaniards and their beliefs. This dichotomy was further utilized by the Americans, who labeled uncolonized groups as "non-Christian tribes." As Professor Owen J. Lynch observed:

At the end of the Spanish era an estimated ten to twenty percent of the native population continued to live outside the colonial pale. Most either belonged to Islamicized communities in the southern parts of the colony or lived among the upland interiors of the major islands. The U.S. Regime generically labeled these peoples as 'non-Christian tribes.' An official Christian/non-Christian dichotomy ensued and was reified in the minds of the colonial elites. The dichotomy ignored the indigenous cultural traits that endured among the Hispanicized, the varied degrees of Hispanization among ostensible Christians, and the cultural variations among those labeled non-Christian.

One of the greatest, and largely unrecognized, ironies of the Taft era was the tendency to overlook the wide spectrum of westernized acculturation among the Philippine masses, as well as the enduring indigenous influences in their lives. As a result, the much disdained Hispanicized peasantry was lumped together and indiscriminately labeled, along with Filipino elites, as 'civilized.' Worcester insisted that people from the three main Christian ethnic groups, i.e. the Tagalogs, Ilocanos, and Visayans, were culturally homogeneous and 'to be treated as a class.' . . . [81]

The benefit of possession since time immemorial means that the holding of the property as an owner must be unbroken. It should not discriminate between a marginal farmer, whose ethnicity is not yet categorized as "indigenous," and a Tagbanua or Palawanon.

Cariño is a correction of the colonial illusion that all land rights and titles emanated from the Spanish Crown. However, despite its promulgation, Cariño was deliberately ignored by the U.S. regime. The errors in our land policies, especially on ancestral domain rights, were never reviewed.[82]

Thus, the ponencia's assertion and affirmation of the doctrine in Cariño is a relief not only to indigenous groups, but also to many marginalized people who have long struggled to defend the native titles to their lands.

II

The Philippine Bill of 1902 granted the colonial government the authority to classify public lands into agricultural, timber, or mineral lands, depending on their "agricultural character and productiveness[.]" Section 13 of Philippine Bill of 1902 provides:

SECTION 13. That the Government of the Philippine Islands, subject to the provisions of this Act and except as herein provided, shall classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands, but such rules and regulations shall not go into effect or have the force of law until they have received the approval of the President, and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensuing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: Provided, That a single homestead entry shall not exceed sixteen hectares in extent.[83] (Emphasis supplied)

In the 1908 case of *Mapa v. Insular Government*,[84] this Court settled the scope and meaning of agricultural land vis-a-vis other land classifications.

In *Mapa*, petitioner Cirilo Mapa (*Mapa*) sought registration of his land, a lowland he and his ancestors had uninterruptedly possessed and used as fish pond, nipa lands, and salt deposits. The government opposed this, saying his land was not agricultural land.[85]

In that case, this Court determined whether the land was an agricultural land within the meaning of Section 54 of Act No. 926. The provision reads:

SECTION 54. The following described persons or their legal successors in right, occupying public lands in the Philippine Islands, or claiming to own any such lands or an interest therein, but whose titles to such lands have not been perfected, may apply to the Court of Land Registration of the Philippine Islands for confirmation of their claims and the issuances of a certificate of title therefor, to wit:

. . . .

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.

This Court, ruling in favor of *Mapa*, held that Section 13 of the Philippine Bill of 1902 did not provide an exact

standard and definition of what comprises an agricultural land. Nevertheless, Section 13 stated that it was incumbent upon the government to "[m]ake rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands." [86] Referring to the definition in the Public Land Act, this Court ruled that the phrase "agricultural land" embraced those lands which are not timber or mineral lands. [87]

This definition was expanded later in *Ramos v. Director of Lands*, [88] which settled that the presumption that land is agricultural in nature absent proof to the contrary.

In *Ramos*, petitioner Cornelio Ramos (Ramos) sought the registration of his possessory title over a land under Section 54 of the Public Land Act. The Director of Lands opposed, arguing that Ramos had not acquired a good title from the Spanish government and that the land was a forest land. The trial court denied the registration. [89]

Upon appeal, this Court upheld the presumption that lands are agricultural in nature and ruled in favor of Ramos. It explained that under the Philippine Bill of 1902 and the Public Land Act, the determination of the land's classification is by exclusion, meaning, it must be determined "if the land is forestal or mineral in nature and, if not so found, to consider it to be agricultural land." [90]

To be classified as a forest, the land must be determined as "forestal" in nature by the Bureau of Forestry. The government policy then is to leave the task of determining forest land to a board of experts, which would investigate if a land may be considered forest land. In its investigation, the Bureau of Forestry uses an exacting list of criteria to classify a land as forest. It ascertains the lands' slope, exposure, soil type, soil cover character, cultivation, among other bio-physical factors. This Court stated:

In many cases, in the opinion of the Bureau of Forestry, lands without a single tree on them are considered as true forest land. For instance, mountain sides which are too steep for cultivation under ordinary practice and which, if cultivated, under ordinary practice would destroy the big natural resource of the soil, by washing, is considered by this Bureau as forest land and in time would be reforested. Of course, examples exist in the Mountain Province where steep hillsides have been terraced and intensive cultivation practiced but even then the mountain people are very careful not to destroy forests or other vegetative cover which they from experience have found protect their water supply. Certain chiefs have lodged protests with the Government against other tribes on the opposite side of the mountain cultivated by them, in order to prevent other tribes from cutting timber or destroy cover guarding their source of water for irrigation.

. . . .

The method employed by the Bureau of Forestry in making inspection of lands, in order to determine whether they are more adapted for agricultural or forest purposes by a technical and duly trained personnel on the different phases of the conservation of natural resources, is based upon a previously prepared set of questions in which the different characters of the land under inspection are discussed, namely:

Slope of land: Level; moderate; steep; very steep.

Exposure: North; South; East; West.

Soil: Clay; sandy loam; sand; rocky; very rocky.

Character of soil cover: Cultivated, grass land, brush land, brush land and timber mixed, dense forest.

If cultivated, state crops being grown and approximate number of hectares under cultivation. (Indicate on sketch.)

For growth of what agricultural products is this land suitable?

State what portion of the tract is wooded, name of important timber species and estimate of stand in cubic meters per hectare, diameter and percentage of each species.

If the land is covered with timber, state whether there is public land suitable for agriculture in vicinity, which is not covered with timber.

Is this land more valuable for agricultural than for forest purposes? (State reasons in full.)

Is this land included or adjoining any proposed or established forest reserve or communal forest? Description and ownership of improvements.

If the land is claimed under private ownership, give the name of the claimant, his place of residence, and state briefly (if necessary on a separate sheet) the grounds upon which he bases his claim.

When the inspection is made on a parcel of public land which has been applied for, the corresponding certificate is forwarded to the Director of Lands; if it is made on a privately claimed parcel for which the issuance of a title is requested from the Court of Land Registration, and the inspection shows the land to be more adapted for forest purposes, then the Director of Forestry requests the Attorney-General to file an opposition, sending him all data collected during the inspection and offering him the forest officer as a witness.[91]

This Court held that the agricultural presumption was based on the government's policy of favoring conversion of lands from public domain to private ownership.[92]

Subsequently, in *J.H. Ankron v. The Government of the Philippine Islands*,[93] this Court reiterated the agricultural presumption, expounding that the classification of land as forestal or mineral is a matter of proof. It held:

[W]hether the particular land in question belongs to one class or another is a question of fact. The mere fact that a tract of land has trees upon it or has mineral within it is not of itself sufficient to declare that one is forestry land and the other, mineral land. There must be some proof of the extent and present or future value of the forestry and of the minerals. While, as we have just said, many definitions have been given for "agriculture," "forestry," and "mineral" lands, and that in each case it is a question of fact, we think it is safe to say that in order to be forestry or mineral land the proof must show that it is more valuable for the forestry or the mineral which it contains than it is for agricultural purposes. (Sec. 7, Act No. 1148.) It is not sufficient to show that there exists some trees upon the land or that it bears some mineral. Land may be classified as forestry or mineral today, and, by reason of the exhaustion of the timber or mineral, be classified as agricultural land tomorrow. And vice-versa, by reason of the rapid growth of timber or the discovery of valuable minerals, lands classified as agricultural today may be differently classified tomorrow. Each case must be decided upon the proof in that particular case, having regard for its present or future value for one or the other purposes. We believe, however, considering the fact that it is a matter of public knowledge that a majority of the lands in the Philippine Islands are agricultural lands, that the courts have a right to presume, in the absence of evidence to the contrary, that in each case the lands are agricultural lands until the contrary is shown. Whatever the land involved in a particular land registration case is forestry or mineral land must, therefore, be a matter of proof. Its superior value for one purpose or the other is a question of fact to be settled by the proof in each particular case.[94]

The presumption in favor of agricultural land is only a disputable presumption. It may be overcome by showing the actual nature of the land. This is consistent with the text of Philippine Bill of 1902, which stated that the determination of land was hinged on its "agricultural character and productiveness." [95] Thus, the Bureau of Forestry's investigation is crucial because it is able to ascertain each land's actual character.

However, in the 1970s, the Marcos administration sought to conserve the country's forest cover. Citing a study by a forestry professor, the government adopted a policy seeking to retain at least 42%, or 12,600,000 hectares, of the country's land area for forest purposes. The study had suggested that lands at least 18% in slope must be considered forest lands based on its calculation that approximately 42% of our land area was 18% in slope.[96]

As a result, the 18%-slope criteria under Presidential Decree No. 705 was established.[97] Section 15 states that any land at least 18% in slope shall be classified as alienable and disposable:

SECTION 15. Topography. — No land of the public domain eighteen per cent (18%) in slope or over shall be classified as alienable and disposable, nor any forest land fifty per cent (50%) in slope or over, as grazing land.

Lands eighteen per cent (18%) in slope or over which have already been declared as alienable and disposable shall be reverted to the classification of forest lands by the Department Head, to form part of the forest reserves, unless they are already covered by existing titles or approved public land application, or actually occupied openly, continuously, adversely and publicly for a period of not less than thirty (30) years as of the effectivity of this Code, where the occupant is qualified for a free patent under the Public Land Act: Provided, That said lands, which are not yet part of a well-established communities, shall be kept in a vegetative condition sufficient to prevent erosion and adverse effects on the lowlands and streams: Provided, Further, That when public interest so requires, steps shall be taken to expropriate, cancel defective titles, reject public land application, or eject occupants thereof.[98]

This is consistent with Section 3(a), which creates a blanket declaration that all unclassified public lands are considered forest lands. Alienable and disposable lands at least 18% slope are reverted to the classification of forest land. This sudden shift in land policy meant that a sole criterion is now used to declare a land as a forest, regardless of its nature. In fact, this criterion led to unrealistic pronouncements declaring lands as forestal even if other biophysical factors show otherwise."[99]

The imposition of a single criterion has drawn criticisms for being an insufficient standard to determine how to economically use the lands without endangering the ecosystem.[100] It fails to account for other factors that will protect and respect the property rights of landowners whose lands are surrounded by forest zones.[101]

Section 15 of Presidential Decree No. 705 violates due process.

Due process under Article III, Section 1 of the 1987 Constitution protects property rights and precludes undue deprivation of property, regardless of the type and nature of the property. It applies not only to titled lands but also to lands that may be unregistered, but whose ownership was vested upon their occupants by prescription.

The arbitrary conversion of lands to forest lands under Section 15 of Presidential Decree No. 705, as well as its proscription against alienability of lands on the basis of a single criterion, violates due process. It unduly severs ownership by automatically declaring lands as inalienable forest lands as long as they have a slope of at least 18%. There may be lands that remain untitled and unregistered but whose ownership had already been vested on their occupants. Section 15 effectively disregards property rights by enacting an outright conversion of any unclassified land as a forest.

Section 15 cannot find refuge in the regalian doctrine. To reiterate, this legal fiction is a jurisprudential aberration that has no constitutional basis. None of our constitutions, past and present, have ever provided a presumption that all lands are public. Thus, it is unsound for this Court to pronounce that "unclassified lands are in the same footing as forest lands"[102] as there may be unclassified lands that have become subject to private ownership. It is likewise unwarranted to equate unclassified lands to forest lands because there are other classifications of lands under our Constitution.

Thus, I take exception to the validity of Section 15 of the Presidential Decree No. 705.

Nevertheless, as pointed out in the ponencia, the exception established in Cariño remains an option for those who seek recognition of their native titles to their lands.

Accordingly, I vote to DISMISS the Petition.

[1] Rollo, pp. 6-7.

[2] Id.

[3] Id. at 3-30.

[4] Presidential Decree No. 705 (1975), sec. 3(a).

[5] Rollo, p. 7.

[6] Id. at 8. The Philippine Bill of 1902 and the 1935 Constitution classified public lands into agricultural, forest, and timber lands. The 1973 Constitution provided more classifications, but this was abbreviated by the 1987 Constitution into four (4) categories: agricultural, forest, timber, and national parks

[7] Id. at 9.

[8] Id.

[9] Id. at 13.

[10] Id. at 13-15 and 17-18.

[11] Id. at 16.

[12] Id. at 15.

[13] Id. at 19.

[14] Id. at 22.

[15] Id. at 85-98.

[16] Id. at 90-91.

[17] Id. at 91.

[18] Id. at 93.

[19] Id. at 94.

[20] Id. at 95.

[21] Id.

[22] Id. at 104-153.

[23] Id. at 104.

[24] Id. at 105.

[25] Id. at 106.

[26] Id. at 107-108, citing *Mapa v. Insular Government*, 10 Phil. 175 (1908) [Per J. Willard, First Division]; and *De Alcoa v. Insular Government*, 13 Phil. 159 (1909) [Per J. Torres, En Banc].

[27] Id. at 113-114 citing *Ankron v. Government of the Philippine Islands*, 40 Phil. 10 [Per J. Johnson, First Division].

[28] Id. at 126-128.

[29] Id. at 128.

[30] Id. at 128-129, citing Act No. 926 (1903), secs. 32 and 54.

[31] Id. at 128, citing Act No. 926(1903), sec. 71.

[32] Id. at 132, citing ADM. CODE, sec. 1827

[33] 41 Phil. 935 (1909) [Per J. Holmes].

[34] Rollo, pp. 132-135.

[35] Id. at 137.

[36] Id. at 150.

[37] Id. at 151, citing Republic Act No. 6657 (1988), sec. 4.

[38] Ponencia, p. 5.

[39] Id. at 6.

[40] Id. at 6-10.

1987 CONST., art. XII, sec. 2 provides in part:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated.

Commonwealth Act No. 141 (1936), sec. 6 provides:

SECTION 6. The President, upon the recommendation of the Secretary of Agriculture and Commerce, shall from time to time classify the lands of the public domain into —

- (a) Alienable or disposable,
- (b) Timber, and
- (c) Mineral lands,

and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their administration and disposition.

[41] Id. at 11.

[42] Id.

[43] Id.

[44] Id. at 13.

[45] Id. at 15 citing Republic v. Abarca, G.R. No. 217703, October 9, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65854>> [Per J. J.C. Reyes, Jr., Second Division].

[46] Id. at 13 citing Republic v. Spouses Alonso, G.R. No. 210738, August 14, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65724>> [Per J. J.C. Reyes, Jr., Second Division].

[47] See J. Leonen, Separate Opinion in Heirs of Malabanan v. Republic, 717 Phil. 141 (2013) [Per J. Bersamin,

En Banc],

[48] 41 Phil. 935 (1909) [Per J. Holmes].

[49] Owen James Lynch, Jr., Land Rights, Land Laws and Land Usurpation: The Spanish Era, 63 Phil. L.J. 82, 85 (1988).

[50] Id. at 85-86.

[51] Id. at 86.

[52] Jose Mencion Molintas, The Philippine Indigenous People's Struggle for Land and Life: Challenging Legal Texts, 21 ARIZ. J. INT'L. AND COMP. L. 269, 283 (2004)

[53] Owen James Lynch, Jr., Land Rights, Land Laws and Land Usurpation: The Spanish Era, 63 PHIL. L.J. 82, 87 (1988).

[54] Jose Mencion Molintas, The Philippine Indigenous People's Struggle For Land and Life: Challenging Legal Texts, 21 ARIZ. J. INT'L. AND COMP. L. 269, 283 (2004), citing Renato Constantino, The Philippines: A Past Revisited (1975).

[55] Owen James Lynch, Jr., Land Rights, Land Laws and Land Usurpation: The Spanish Era, 63 Phil. L.J. 82, 107 (1988).

[56] Id. at 108. The Maura Law, or the Royal Decree of February 13, 1894, was named after the then Minister of Colonies, Antonio Maura y Montaner.

[57] Id.

[58] Id. at 109.

[59] Owen James Lynch, Jr. and Kirk Talbott, Legal Responses to the Philippine Deforestation Crises, 20 N.Y.U. Int'l. L. & Pol. 679, 686 (1988).

[60] Jose Mencion Molintas, The Philippine Indigenous People's Struggle For Land and Life: Challenging Legal Texts, 21 Ariz. J. Int'l. And Comp. L. 269, 284 (2004).

[61] Philippine Bill of 1902, sec. 12.

[62] 3 Phil. 537 (1904) [Per J. Willard, En Banc].

[63] Id. at 542-544.

[64] 41 Phil. 935 (1909) [Per J. Holmes].

[65] Id.

[66] Cariño v. Insular Government, 7 Phil. 132 (1906) [Per J. Willard, First Division].

[67] Cariño v. Insular Government of the Philippine Islands, 41 Phil. 935 (1909) [Per J. Holmes].

[68] Id. at 938-939.

[69] Id. at 940.

[70] Id.

[71] Id. at 941.

[72] Id. at 944.

[73] Act No. 926 (1903), sec. 1 provides:

SECTION 1. Any citizen of the Philippine Islands, or of the United States, or of any Insular possession thereof, over the age of twenty-one years or the head of a family may, as hereinafter provided, enter a homestead of not exceeding sixteen hectares of unoccupied, unreserved unappropriated agricultural public land in the Philippine Islands, as defined by the Act of Congress of July first, nineteen hundred and two entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes which shall be taken, if on surveyed lands, by legal subdivisions, but if on unsurveyed lands shall be located in a body which shall be as nearly as practicable rectangular in shape and not more than eight hundred meters in length; but no person who is the owner of more than sixteen hectares of land in said islands or who has had the benefits of any gratuitous allotment of sixteen hectares of land since the acquisition of the Islands by the United States, shall be entitled to the benefits of this chapter.

[74] See Owen James Lynch, Jr., Native Title, Private Right and Tribal Land Law: An Introductory Survey, 57 PHIL. L.J. 268, 280 (1982).

[75] Commonwealth Act No. 141 (1936), sec. 44.

[76] 184 Phil. 401 (1980) [Per J. De Castro, First Division]

[77] Id. at 406-407.

[78] Republic Act No. 1942 (1957), sec. 1

[79] Ponencia, p, 7

[80] See Rubi v. Provincial Board of Mindoro, 39 Phil. 660 (1919) [Per J. Malcolm, En Banc].

[81] 1 OWEN J. LYNCH, COLONIAL LEGACIES IN A FRAGILE REPUBLIC: PHILIPPINE LAND LAW AND STATE FORMATION 243-244 (1st ed., 2011).

[82] Id. at 437

[83] Philippine Bill of 1902, sec. 13.

[84] 10 Phil. 175 (1908) [Per J. Willard, First Division].

[85] Id.

[86] Philippine Bill of 1902, sec . 13

[87] Mapa v. Insular Government, 10 Phil. 175 (1908) [Per J. Willard, First Division]

[88] 39 Phil. 175 (1918) [Per J. Malcolm, En Banc]

[89] Id.

[90] Id. at 181

[91] Id. at 183-185

[92] Id.

[93] 40 Phil. 10 (1919) [Per J. Johnson, First Division]

[94] Id. at 15-16.

[95] Philippine Bill of 1902, sec. 13.

[96] Owen James Lynch, Jr., Native Title, Private Right and Tribal Land Law: An Introductory Survey, 57 PHIL. L.J. 268, 285 (1982).

[97] Id.

[98] Presidential Decree No. 705 (1975), sec. 15.

[99] See Secretary of the Department of Environment and Natural Resources v. Yap, 589 Phil. 156 (2008) [Per J. R.T. Reyes, En Banc], where Boracay Islands, even if admittedly stripped of its forest cover and has become a commercial land, was still classified as forest pursuant to Section 3(a) of Presidential Decree No. 705.

[100] Owen James Lynch, Jr., Native Title, Private Right and Tribal Land Law: An Introductory Survey, 57 PHIL. L.J. 268, 285-286 (1982).

[101] Id. at 286

[102] Ponencia, p. 11.

CONCURRING OPINION

CAGUIOA, J.:

The ponencia dismisses the present Petition for Certiorari and affirms the constitutionality of Section 3(a) of Presidential Decree No. (PD) 705,[1] otherwise known as the Forestry Reform Code of the Philippines.

I concur.

I submit this Concurring Opinion principally to express my views with respect to the Regalian doctrine and clarify the parameters of the presumption of State ownership.

The Regalian doctrine is the foundation of the State's property regime.

In his Separate Opinion in Cruz v. Secretary of Environment and Natural Resources,[2] Justice Reynato S. Puno explained the origins of the Regalian doctrine and traced its history back to the Laws of the Indies, thus:

The capacity of the State to own or acquire property is the state's power of dominium. This was the foundation for the early Spanish decrees embracing the feudal theory of jura regalia. The "Regalian [d]octrine" or jura regalia is a Western legal concept that was first introduced by the Spaniards into the country through the Laws of the Indies and the Royal Cedillas. The Laws of the Indies, i.e., more specifically, Law 14, Title 12, Book 4 of the Novisima Recopilacion de Leyes de las Indias, set the policy of the Spanish Crown with respect to the Philippine Islands in the following manner:

"We, having acquired full sovereignty over the Indies, and all lands, territories, and possessions not heretofore ceded away by our royal predecessors, or by us, or in our name, still pertaining to the royal crown and patrimony, it is our will that all lands which are held without proper and true deeds of grant be restored to us as they belong to us, in order that after reserving before all what to us or to our viceroys, audiencias, and governors may seem necessary for public squares, ways, pastures, and commons in those places which are peopled, taking into consideration not only their present condition, but also their future and their probable increase, and after distributing to the natives what may be necessary for tillage and pasturage, confirming them in what they now have and giving them more if necessary, all the rest of said lands may remain free and unencumbered for us to dispose of as we may wish.

We therefore order and command that all viceroys and presidents of pretorial courts designate at such time as shall to them seem most expedient, a suitable period within which all possessors of tracts, farms, plantations, and estates shall exhibit to them and to the court officers appointed by them for this purpose, their title deeds thereto. And those who are in possession by virtue of proper deeds and receipts, or by virtue of just prescriptive right shall be protected, and all the rest shall be restored to us to be disposed of at our will."

The Philippines passed to Spain by virtue of "discovery" and conquest. Consequently, all lands became the exclusive patrimony and dominion of the Spanish Crown. The Spanish Government took charge of distributing the lands by issuing royal grants and concessions to Spaniards, both military and civilian. Private land titles could only be acquired from the government either by purchase or by the various modes of land grant from the Crown.

The Laws of the Indies were followed by the Ley Hipotecaria, or the Mortgage Law of 1893. The Spanish Mortgage Law provided for the systematic registration of titles and deeds as well as possessory claims. The law sought to register and tax lands pursuant to the Royal Decree of 1880. The Royal Decree of 1894, or the "Maura Law," was partly an amendment of the Mortgage Law as well as the Laws of the Indies, as already amended by previous orders and decrees. This was the last Spanish land law promulgated in the Philippines. It required the "adjustment" or registration of all agricultural lands, otherwise the lands shall revert to the State.

Four years later, by the Treaty of Paris of December 10, 1898, Spain ceded to the government of the United States all of its rights, interests and claims over the national territory of the Philippine Islands. In 1903, the United States colonial government, through the Philippine Commission, passed Act No. 926, the first Public Land Act.[3]

That the Regalian doctrine remained in force even after the Philippines was ceded to the United States appears to have been confirmed by the Court En Banc in the 1904 case of *Valenton v. Murciano*,[4] through the following observations:

The policy pursued by the Spanish Government from the earliest times, requiring settlers on the public lands to obtain deeds therefor from the State, has been continued by the American Government in Act No. 926, which takes effect when approved by Congress. x x x[5]

Subsequently, the Regalian doctrine was adopted under the 1935 Constitution, particularly, in Section 1, Article XIII:

SECTION 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and limit of the grant. (Emphasis supplied)

Under the 1973 Constitution, the Regalian doctrine was set forth in clearer terms, hence:

SECTION 8. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, wildlife, and other natural resources of the Philippines belong to the State. With the exception of agricultural, industrial or commercial, residential, and resettlement lands of the public domain, natural resources shall not be alienated, and no license, concession, or lease for the exploration,

development, exploitation, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for not more than twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases, beneficial use may be the measure and the limit of the grant.[6] (Emphasis supplied)

At present, the Regalian doctrine remains enshrined in Section 2, Article XII of the 1987 Constitution, which reads:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant. (Emphasis supplied)

In addition, the 1987 Constitution further states that only lands classified as agricultural shall be alienable, and thus, susceptible of private ownership.[7]

Based on the foregoing, I submit that the Regalian doctrine remains the basic foundation of the State's property regime under the present Constitution.

The Regalian doctrine espouses that all lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership of land. Accordingly, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. Unless land is shown to have been reclassified as agricultural (and thus, alienable), such land remains part of the inalienable land of the public domain.[8]

As pointedly discussed by the ponencia, an exception to the general presumption that "all lands are part of public domain" had been crafted by the United States Supreme Court (U.S. Supreme Court) in the 1909 case of *Cariño v. Insular Government*[9] (*Cariño*).

Cariño involved a claim of ownership over land occupied by the petitioner therein and his ancestors since time immemorial, that is, before the Spanish Conquest. Taking this peculiar circumstance into account, the U.S. Supreme Court held:

The Province of Benguet was inhabited by a tribe that the Solicitor General, in his argument, characterized as a savage tribe that never was brought under the civil or military government of the Spanish Crown. It seems probable, if not certain, that the Spanish officials would not have granted to anyone in that province the registration to which formerly the plaintiff was entitled by the Spanish laws, and which would have made his title beyond question good. Whatever may have been the technical position of Spain, it does not follow that, in the view of the United States, he had lost all rights and was a mere trespasser when the present government seized his land. The argument to that effect seems to amount to a denial of native titles throughout an important part of the island of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce.

x x x x

Whatever the law upon these points may be, and we mean to go no further than the necessities of decision demand, every presumption is and ought to be against the government in a case like the present. It might,

perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land. Certainly in a case like this, if there is doubt or ambiguity in the Spanish law, we ought to give the applicant the benefit of the doubt. Whether justice to the natives and the import of the organic act ought not to carry us beyond a subtle examination of ancient texts, or perhaps even beyond the attitude of Spanish law, humane though it was, it is unnecessary to decide. If, in a tacit way, it was assumed that the wild tribes of the Philippines were to be dealt with as the power and inclination of the conqueror might dictate, Congress has not yet sanctioned the same course as the proper one "for the benefit of the inhabitants thereof." [10] (Emphasis supplied)

I share the ponente's view that Cariño merely carved out an exception thereto in recognition of native titles which vested prior to the Spanish Conquest. As lands subject of these native titles have been held since time immemorial, they are deemed excluded from the mass of public domain placed under the scope of the Regalian doctrine. That is the limited context of Cariño's ruling that the presumption of private ownership of lands may be applied.

Section 3 (a) of PD 705 is consistent with the Regalian doctrine.

Proceeding now to the issue at hand, the petitioners herein assail the constitutionality of Section 3 (a) of PD 705 which defines public forest. It states:

SECTION 3. Definitions. -

a)

Public forest is the mass of lands of the public domain which has not been the subject of the present system of classification for the determination of which lands are needed for forest purposes and which are not. (Emphasis supplied)

According to the petitioners, the automatic treatment of unclassified lands as forest lands is unconstitutional as it operates to deprive those who have long been in possession of their vested right of ownership over said unclassified lands.[11]

The petitioners anchor their position on two premises —first, that unclassified lands of the public domain are presumed to be agricultural land, and thus, alienable,[12] and second, that Section 3(a) operates as a wholesale classification of alienable unclassified land to inalienable forest land.[13]

Both premises are incorrect.

I. Unclassified lands of the public domain are inalienable

As stated, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. Unless land is shown to have been reclassified as alienable agricultural land, such land remains, and should be treated as, inalienable land of the public domain.

I am aware of the Court's ruling in *Ibañez de Aldecoa v. Insular Government*[14] (*De Aldecoa*) to the effect that "with the exception of those comprised within the mineral and timber zone, all lands owned by the State or by the sovereign nation are public in character, and per se alienable x x x, provided they are not destined to the use of the public in general or reserved by the Government in accordance with law." [15] I am likewise aware of the Court's pronouncements in *Ramos v. Director of Lands*[16] (*Ramos*) and *J.H. Ankron v. Government of the Philippine Islands*[17] (*Ankron*) which are now relied upon by the petitioners as basis to argue that lands should be presumed agricultural in nature, in the absence of contrary proof.

I submit, however, that these rulings should be understood in their proper context.

De Aldecoa, Ramos and Ankron involved actions for registration of title decided under the regime of the Philippine Bill of 1902[18].

Under the Philippine Bill of 1902, the Government of the Philippine Islands had been authorized to classify land into three categories — timber, mineral, and agricultural, thus:

SECTION 13. That the Government of the Philippine Islands, subject to the provisions of this Act and except as herein provided, shall classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands, but such rules and regulations shall not go into effect or have the force of law until they have received the approval of the President, and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensuing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: Provided, That a single homestead entry shall not exceed sixteen hectares in extent. (Emphasis supplied)

Pursuant to the mandate in Section 13, the Philippine Commission enacted Act No. 926[19] (Act 926) otherwise known as the first Public Land Act.

While Act 926 prescribed the rules and regulations for the lease, sale, and other disposition of alienable public lands, it failed to grant the power to classify lands to any central authority. In the absence of such specific grant of power, courts were then confronted with the task of determining land classification in justiciable cases on an ad hoc basis, that is, depending on the evidence presented in each particular case.

The Court's ruling in *Secretary of the Department of Environment and Natural Resources v. Yap*[20] (Yap) is instructive.

In Yap, Proclamation No. (Proclamation) 1801[21] issued by President Ferdinand Marcos (President Marcos) and its implementing circular Philippine Tourism Authority (PTA) Circular No. 3-82 were called into question.

Under Proclamation 1801, President Marcos declared certain islands, coves, and peninsulas as tourist zones and marine reserves and placed them under the administration of the PTA. Boracay Island was included among the islands declared as tourist zones.

Land claimants in Yap argued that Proclamation 1801 and PTA Circular No. 3-82 raised doubts on their ability to secure Torrens titles over land which they have been occupying since June 12, 1945 or earlier. Thus, they filed a Petition for Declaratory Relief with the RTC of Kalibo, Aklan.

The Republic, through the Office of the Solicitor General (OSG), opposed the Petition for Declaratory Relief, primarily arguing that Boracay Island constitutes unclassified land which, in turn, is inalienable. Since Boracay Island has not been classified as alienable and disposable land, whatever form of possession which the claimants had, could not ripen into ownership.

Acting on the claimants' Petition for Declaratory Relief, the RTC held that Proclamation 1801 and PTA Circular No. 3-82 "pose no legal obstacle to the petitioners and those similarly situated to acquire title to their lands in Boracay, in accordance with the applicable laws and in the manner prescribed therein." [22] The CA affirmed.

The Republic later elevated the case to the Court via Petition for Review which was docketed as G.R. No. 167707. G.R. No. 167707 was later consolidated with an original petition for prohibition, mandamus, and nullification of Proclamation 1064[23] docketed as G.R. No. 173775 filed by another set of land claimants.

Under Proclamation 1064, President Gloria Macapagal-Arroyo classified Boracay Island into 400 hectares of reserved forest land and 628.96 hectares of agricultural land. The petitioners in G.R. No. 173775 assailed the validity of Proclamation 1064 as it allegedly infringed on their vested rights over portions of Boracay Island. The Republic, again through the OSG, countered that Boracay Island is unclassified land. Thus, the portions of the island which remain inalienable under Proclamation 1064 could not be subject of judicial confirmation of imperfect title.

The land claimants in G.R. Nos. 167707 and 173775 argued, among others, that Boracay Island constitute agricultural land pursuant to *Ankron* and *De Aldecoa*. The Court rejected this assertion in this wise:

Ankron and *De Aldecoa* were decided at a time when the President of the Philippines had no power to classify lands of the public domain into mineral, timber, and agricultural. At that time, the courts were free to make corresponding classifications in justiciable cases, or were vested with implicit power to do so, depending upon the preponderance of the evidence. This was the Court's ruling in *Heirs of the Late Spouses Pedro S. Palanca and Soterranea Rafols Vda. De Palanca v. Republic*, in which it stated, through Justice Adolfo Azcuna, viz.:

"x x x Petitioners furthermore insist that a particular land need not be formally released by an act of the Executive before it can be deemed open to private ownership, citing the cases of *Ramos v. Director of Lands* and *Ankron v. Government of the Philippine Islands*.

X X X X

Petitioner's reliance upon *Ramos v. Director of Lands* and *Ankron v. Government* is misplaced. These cases were decided under the Philippine Bill of 1902 and the first Public Land Act No. 926 enacted by the Philippine Commission on October 7, 1926, under which there was no legal provision vesting in the Chief Executive or President of the Philippines the power to classify lands of the public domain into mineral, timber and agricultural so that the courts then were free to make corresponding classifications in justiciable cases, or were vested with implicit power to do so, depending upon the preponderance of the evidence."

To aid the courts in resolving land registration cases under Act No. 926, it was then necessary to devise a presumption on land classification. Thus evolved the dictum in *Ankron* that "the courts have a right to presume, in the absence of evidence to the contrary, that in each case the lands are agricultural lands until the contrary is shown."

But We cannot unduly expand the presumption in *Ankron* and *De Aldecoa* to an argument that all lands of the public domain had been automatically reclassified as disposable and alienable agricultural lands. By no stretch of imagination did the presumption convert all lands of the public domain into agricultural lands.

If We accept the position of private claimants, the Philippine Bill of 1902 and Act No. 926 would have automatically made all lands in the Philippines, except those already classified as timber or mineral land, alienable and disposable lands. That would take these lands out of State ownership and worse, would be utterly inconsistent with and totally repugnant to the long-entrenched Regalian doctrine.

The presumption in *Ankron* and *De Aldecoa* attaches only to land registration cases brought under the provisions of Act No. 926, or more specifically those cases dealing with judicial and administrative confirmation of imperfect titles. The presumption applies to an applicant for judicial or administrative confirmation of imperfect title under Act No. 926. It certainly cannot apply to landowners, such as private claimants or their predecessors-in-interest, who failed to avail themselves of the benefits of Act No. 926. As to them, their land remained unclassified and, by virtue of the Regalian doctrine, continued to be owned by the State.

In any case, the assumption in *Ankron* and *De Aldecoa* was not absolute. Land classification was, in the end, dependent on proof. If there was proof that the land was better suited for non-agricultural uses, the courts could

adjudge it as a mineral or timber land despite the presumption. x x x

x x x x

Since 1919, courts were no longer free to determine the classification of lands from the facts of each case, except those that have already become private lands. Act No. 2874, promulgated in 1919 and reproduced in Section 6 of CA No. 141, gave the Executive Department, through the President, the exclusive prerogative to classify or reclassify public lands into alienable or disposable, mineral or forest. Since then, courts no longer had the authority, whether express or implied, to determine the classification of lands of the public domain.[24] (Emphasis supplied)

Verily, the presumption espoused in *De Aldecoa, Ramos, and Ankron* was an evidentiary tool devised in the limited context of registration cases brought under the provisions of Act 926. Such presumption no longer applies in the current statutory regime.

II.

Owing to the Regalian doctrine, unclassified lands of the public domain necessarily remain inalienable until classified as agricultural land

At present, Section 3, Article XII of the 1987 Constitution classifies lands of the public domain into four (4) categories — agricultural lands, forest or timber lands, mineral lands, and national parks, to wit:

SECTION 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. x x x (emphasis supplied)

Section 3 mandates that only lands classified as agricultural may be declared alienable, and thus susceptible of private ownership. Thus, all lands which have not been classified as such necessarily remain inalienable.

As pointedly discussed by the ponencia, the fact that unclassified lands remain inalienable until released and declared open to disposition has been confirmed by the Court En Banc in *Yap*, thus:

Except for lands already covered by existing titles, Boracay was an unclassified land of the public domain prior to [Proclamation 1064]. Such unclassified lands are considered public forest under [PD 705]. The DENR and the National Mapping and Resource Information Authority certify that Boracay Island is an unclassified land of the public domain.

[PD 705] issued by President Marcos categorized all unclassified lands of the public domain as public forest. Section 3(a) of [PD 705] defines a public forest as "a mass of lands of the public domain which has not been the subject of the present system of classification for the determination of which lands are needed for forest purpose and which are not". Applying [PD 705], all unclassified lands, including those in Boracay Island, are ipso facto considered public forests. [PD 705], however, respects titles already existing prior to its effectivity.

The Court notes that the classification of Boracay as a forest land under [PD 705] may seem to be out of touch with the present realities in the island. Boracay, no doubt, has been partly stripped of its forest cover to pave the way for commercial developments. As a premier tourist destination for local and foreign tourists, Boracay appears more of a commercial island resort, rather than a forest land.

Nevertheless, that the occupants of Boracay have built multi-million peso beach resorts on the island; that the island has already been stripped of its forest cover; or that the implementation of [Proclamation 1064] will destroy the island's tourism industry, do not negate its character as public forest.

Forests, in the context of both the Public Land Act and the Constitution classifying lands of the public domain into "agricultural, forest or timber, mineral lands, and national parks," do not necessarily refer to large tracts of wooded land or expanses covered by dense growths of trees and underbrushes. The discussion in *Heirs of Amunategui v. Director of Forestry* is particularly instructive:

"A forested area classified as forest land of the public domain does not lose such classification simply because loggers or settlers may have stripped it of its forest cover. Parcels of land classified as forest land may actually be covered with grass or planted to crops by kaingin cultivators or other farmers. "Forest lands" do not have to be on mountains or in out of the way places. Swampy areas covered by mangrove trees, nipa palms, and other trees growing in brackish or sea water may also be classified as forest land. The classification is descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like. Unless and until the land classified as "forest" is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain, the rules on confirmation of imperfect title do not apply." x x x

There is a big difference between "forest" as defined in a dictionary and "forest or timber land" as a classification of lands of the public domain as appearing in our statutes. One is descriptive of what appears on the land while the other is a legal status, a classification for legal purposes. At any rate, the Court is tasked to determine the legal status of Boracay Island, and not look into its physical layout. Hence, even if its forest cover has been replaced by beach resorts, restaurants and other commercial establishments, it has not been automatically converted from public forest to alienable agricultural land.

Private claimants cannot rely on [Proclamation 1801] as basis for judicial confirmation of imperfect title. The proclamation did not convert Boracay into an agricultural land. However, private claimants argue that [Proclamation 1801] issued by then President Marcos in 1978 entitles them to judicial confirmation of imperfect title. The Proclamation classified Boracay, among other islands, as a tourist zone. Private claimants assert that, as a tourist spot, the island is susceptible of private ownership.

[Proclamation 1801] or PTA Circular No. 3-82 did not convert the whole of Boracay into an agricultural land. There is nothing in the law or the Circular which made Boracay Island an agricultural land. The reference in Circular No. 3-82 to "private lands" and "areas declared as alienable and disposable" does not by itself classify the entire island as agricultural. Notably, Circular No. 3-82 makes reference not only to private lands and areas but also to public forested lands, x x x

x x x x

[Proclamation 1801] cannot be deemed the positive act needed to classify Boracay Island as alienable and disposable land. If President Marcos intended to classify the island as alienable and disposable or forest, or both, he would have identified the specific limits of each, as President Arroyo did in [Proclamation. 1064]. This was not done in [Proclamation 1801].

x x x x

It was [Proclamation 1064] of 2006 which positively declared part of Boracay as alienable and opened the same to private ownership. Sections 6 and 7 of CA No. 141 provide that it is only the President, upon the recommendation of the proper department head, who has the authority to classify the lands of the public domain into alienable or disposable, timber and mineral lands.

In issuing [Proclamation 1064], President Gloria Macapagal-Arroyo merely exercised the authority granted to her to classify lands of the public domain, presumably subject to existing vested rights. Classification of public lands is the exclusive prerogative of the Executive Department, through the Office of the President. Courts have no

authority to do so. Absent such classification, the land remains unclassified until released and rendered open to disposition.[25](Emphasis supplied; emphasis in the original omitted)

Contrary to the petitioners' view, Section 3(a) does not operate as a wholesale classification of alienable land to inalienable land, for lands which are unclassified remain inalienable until released and declared by the Executive as agricultural land, the latter being the sole classification of land which may be subject to alienation and disposition.

Section 15 of PD 705 was not assailed herein.

My esteemed colleague Justice Leonen is of the view that Section 15 of PD 705 violates the due process clause enshrined under Section 1, Article III of the 1987 Constitution.[26]

Section 15 of PD 705 states:

SECTION 15. Topography. - No land of the public domain eighteen per cent (18%) in slope or over shall be classified as alienable and disposable, nor any forest land fifty per cent (50%) in slope or over, as grazing land.

Lands eighteen per cent (18%) in slope or over which have already been declared as alienable and disposable shall be reverted to the classification of forest lands by the Department Head, to form part of the forest reserves, unless they are already covered by existing titles or approved public land application, or actually occupied openly, continuously, adversely and publicly for a period of not less than thirty (30) years as of the effectivity of this Code, where the occupant is qualified for a free patent under the Public Land Act: Provided, That said lands, which are not yet part of a well-established communities, shall be kept in a vegetative condition sufficient to prevent erosion and adverse effects on the lowlands and streams: Provided, further, That when public interest so requires, steps shall be taken to expropriate, cancel defective titles, reject public land application, or eject occupants thereof.

Justice Leonen adds that the "sudden shift in land policy meant that a sole criterion is now used to declare a land as a forest, regardless of its nature"[27] and has in fact "led to unrealistic pronouncements declaring lands as forestal even if other biophysical factors show otherwise." [28]

I note, however, that the Petition solely assails the constitutionality of Section 3 (a) of PD 705.

Section 3(a) merely defines the term "public forest" as "the mass of lands of the public domain which has not been the subject of the present system of classification[.]" As explained, Section 3(a) does not have the effect of changing the nature of the lands under its scope, as both unclassified and forest lands are similarly inalienable. On the other hand, Section 15 mandates the reversion of alienable and disposable land 18% in slope or over to the classification of forest lands, subject to existing rights. To my mind Section 3(a) and Section 15 cover entirely different subject matters.

Thus, considering that the validity of Section 15 of PD 705 (including the 18% slope criterion set forth thereunder) is not assailed by the petitioners herein, I submit that any pronouncement on these matters must await the filing of the proper case which directly puts the validity of Section 15 in issue. Any opinion thus expressed regarding Section 15 would be completely irrelevant and obiter.

Based on these premises, I vote to DISMISS the Petition.

[1] REVISING PRESIDENTIAL DECREE NO. 389, OTHERWISE KNOWN AS THE FORESTRY REFORM CODE OF THE PHILIPPINES, May 19, 1975.

[2] G.R. No. 135385, December 6, 2000, 347 SCRA 128, 162-242.

[3] Id. at 165-167.

[4] 3 Phil. 537 (1904) [En Banc, per J. Willard].

[5] Id. at 553.

[6] 1973 Constitution, Art. XIV.

[7] Article XII. Sec. 3 states:

SECTION 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof, by purchase, homestead, or grant.

[8] Zarate v. Director of Lands, G.R. No. 131501, July 14 2004, 434 SCRA 322, 331 [Second Division, per J. Callejo, Sr.].

[9] 212 U.S. 449 (1909). The case was brought from the Philippine Supreme Court to the U.S. Supreme Court via writ of error.

[10] Cariño v. Insular Government, id. at 458-460.

[11] Ponencia, p. 3.

[12] See Petition, rollo, p. 8.

[13] See id. at 9.

[14] Phil. 159 (1909) [En Banc, per J. Torres].

[15] Id. at 166.

[16] 39 Phil. 175 (1918) [En Banc, per J. Malcolm].

[17] 40 Phil. 10 (1919) [First Division, per J. Johnson].

[18] ACT OF CONGRESS OF JULY FIRST, NINETEEN HUNDRED AND TWO, "THE PHILIPPINE BILL" AN ACT TEMPORARILY TO PROVIDE FOR THE ADMINISTRATION OF THE AFFAIRS OF CIVIL GOVERNMENT IN THE PHILIPPINE ISLANDS, AND FOR OTHER PURPOSES, July 1, 1902.

[19] AN ACT PRESCRIBING RULES AND REGULATIONS GOVERNING THE HOMESTEADING, SELLING, AND LEASING OF PORTIONS OF THE PUBLIC DOMAIN OF THE PHILIPPINE ISLANDS, PRESCRIBING TERMS AND CONDITIONS TO ENABLE PERSONS TO PERFECT THEIR TITLES TO PUBLIC LANDS IN SAID ISLANDS, PROVIDING FOR THE ISSUANCE OF PATENTS WITHOUT COMPENSATION TO CERTAIN NATIVE SETTLERS UPON THE PUBLIC LANDS, PROVIDING FOR THE ESTABLISHMENT OF TOWN SITES AND SALE OF LOTS THEREIN, AND PROVIDING FOR THE DETERMINATION BY THE PHILIPPINES COURT OF LAND REGISTRATION OF ALL PROCEEDINGS FOR COMPLETION OF IMPERFECT TITLES AND FOR THE CANCELLATION OR CONFIRMATION OF SPANISH CONCESSIONS AND GRANTS IN SAID ISLANDS, AS AUTHORIZED BY SECTIONS THIRTEEN, FOURTEEN, FIFTEEN AND SIXTY-TWO OF THE ACT OF CONGRESS OF JULY FIRST, NINETEEN HUNDRED AND TWO, ENTITLED "AN ACT TEMPORARILY TO PROVIDE FOR THE

ADMINISTRATION OF THE AFFAIRS OF CIVIL GOVERNMENT IN THE PHILIPPINE ISLANDS, AND FOR OTHER PURPOSES," October 7, 1903.

[20] G.R. Nos. 167707 and 173775, October 8, 2002, 568 SCRA 164 [En Banc, per J. R. T. Reyes]

[21] DECLARING CERTAIN ISLANDS, COVES AND PENINSULAS IN THE PHILIPPINES AS TOURIST ZONES AND MARINE RESERVE UNDER THE ADMINISTRATION AND CONTROL OF THE PHILIPPINE TOURISM AUTHORITY, November 10, 1978.

[22] Secretary of the Department of Environment and Natural Resources v. Yap, *supra* note 20, at 178.

[23] CLASSIFYING BORACAY ISLAND SITUATED IN THE MUNICIPALITY OF MALAY, PROVINCE OF Aklan INTO FORESTLAND (PROTECTION PURPOSES) AND INTO AGRICULTURAL LAND (ALIENABLE AND DISPOSABLE) PURSUANT TO PRESIDENTIAL DECREE NO. 705 (REVISED FORESTRY REFORM CODE OF THE PHILIPPINES), May 22, 2006.

[24] Secretary of the Department of Environment and Natural Resources v. Yap, *supra* note 20, at 194-197.

[25] *Id.* at 200-205.

[26] J. Leonen, Concurring Opinion, p. 19.

[27] *Id.*

[28] *Id.*

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