

SALVADOR H. LAUREL, PETITIONER, VS. RAMON GARCIA, AS HEAD OF THE ASSET PRIVATIZATION TRUST, RAUL MANGLAPUS, AS SECRETARY OF FOREIGN AFFAIRS, AND CATALINO MACARAIG, AS EXECUTIVE ...*G.R. No. 92013. July 25, 1990*

Ponente: GUTIERREZ, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-92013/>**GUTIERREZ, JR., J.:**

These are two petitions for prohibition seeking to enjoin respondents, their representatives and agents from proceeding with the bidding for the sale of the 3,179 square meters of land at 306 Roppongi, 5-Chome Minato-ku, Tokyo, Japan scheduled on February 21, 1990. We granted the prayer for a temporary restraining order effective February 20, 1990. One of the petitioners (in G. R. No. 92047) likewise prays for a writ of mandamus to compel the respondents to fully disclose to the public the basis of their decision to push through with the sale of the Roppongi property inspite of strong public opposition and to explain the proceedings which effectively prevent the participation of Filipino citizens and entities in the bidding process.

The oral arguments in G. R. No. 92013, Laurel v. Garcia, et al. were heard by the Court on March 13, 1990. After G. R. No. 92047, Ojeda v. Secretary Macaraig, et al. was filed, the respondents were required to file a comment by the Court's resolution dated February 22, 1990. The two petitions were consolidated on March 27, 1990 when the memoranda of the parties in the Laurel case were deliberated upon.

The Court could not act on these cases immediately because the respondents filed a motion for an extension of thirty (30) days to file comment in G. R. No. 92047, followed by a second motion for an extension of another thirty (30) days which we granted on May 8, 1990, a third motion for extension of time granted on May 24, 1990 and a fourth motion for extension of time which we granted on June 5, 1990 but calling the attention of the respondents to the length of time the petitions have been pending. After the comment was filed, the petitioner in G. R. No. 92047 asked for thirty (30) days to file a reply. We noted his motion and resolved to decide the two (2) cases.

I

The subject property in this case is one of the four (4) properties in Japan acquired by the Philippine government under the Reparations Agreement entered into with Japan on May 9, 1956, the other lots being:

- (1) The Nampeidai Property at 11-24 Nampeidai-machi, Shibuya-ku, Tokyo which has an area of approximately 2,489.96 square meters, and is at present the site of the Philippine Embassy Chancery;
- (2) The Kobe Commercial Property at 63 Naniwa-cho, Kobe, with an an area of around 764.72 square meters and categorized as a commercial lot now being used as a warehouse and parking lot for the consulate staff; and
- (3) The Kobe Residential Property at 1-980-2 Obanoyama-cho, Shinohara, Nada-ku, Kobe, a residential lot which

is now vacant.

The properties and the capital goods and services procured from the Japanese government for national development projects are part of the indemnification to the Filipino people for their losses in life and property and their suffering during World War II.

The Reparations Agreement provides that reparations valued at \$550 million would be payable in twenty (20) years in accordance with annual schedules of procurements to be fixed by the Philippine and Japanese governments (Article 2, Reparations Agreement). Rep. Act No. 1789, the Reparations Law, prescribes the national policy on procurement and utilization of reparations and development loans. The procurements are divided into those for use by the government sector and those for private parties in projects as the then National Economic Council shall determine. Those intended for the private sector shall be made available by sale to Filipino citizens or to one hundred (100%) percent Filipino-owned entities in national development projects.

The Roppongi property was acquired from the Japanese government under the Second Year Schedule and listed under the heading "Government Sector", through Reparations Contract No. 300 dated June 27, 1958. The Roppongi property consists of the land and building "for the Chancery of the Philippine Embassy" (Annex M-D to Memorandum for Petitioner, p. 503). As intended, it became the site of the Philippine Embassy until the latter was transferred to Nampeidai on July 22, 1976 when the Roppongi building needed major repairs. Due to the failure of our government to provide necessary funds, the Roppongi property has remained undeveloped since that time.

A proposal was presented to President Corazon C. Aquino by former Philippine Ambassador to Japan, Carlos J. Valdez, to make the property the subject of a lease agreement with a Japanese firm - Kajima Corporation - which shall construct two (2) buildings in Roppongi and one (1) building in Nampeidai and renovate the present Philippine Chancery in Nampeidai. The consideration of the construction would be the lease to the foreign corporation of one (1) of the buildings to be constructed in Roppongi and the two (2) buildings in Nampeidai. The other building in Roppongi shall then be used as the Philippine Embassy Chancery. At the end of the lease period, all the three leased buildings shall be occupied and used by the Philippine government. No change of ownership or title shall occur. (See Annex "B" to Reply to Comment) The Philippine government retains the title all throughout the lease period and thereafter. However, the government has not acted favorably on this proposal which is pending approval and ratification between the parties. Instead, on August 11, 1986, President Aquino created a committee to study the disposition/utilization of Philippine government properties in Tokyo and Kobe, Japan through Administrative Order No. 3, followed by Administrative Orders Numbered 3-A, B, C and D.

On July 25, 1987, the President issued Executive Order No. 296 entitling non-Filipino citizens or entities to avail of reparations' capital goods and services in the event of sale, lease or disposition. The four properties in Japan including the Roppongi were specifically mentioned in the first "Whereas" clause.

Amidst opposition by various sectors, the Executive branch of the government has been pushing, with great vigor, its decision to sell the reparations properties starting with the Roppongi lot. The property has twice been set for bidding at a minimum floor price of \$225 million. The first bidding was a failure since only one bidder qualified. The second one, after postponements, has not yet materialized. The last scheduled bidding on February 21, 1990 was restrained by this Court. Later, the rules on bidding were changed such that the \$225 million floor price became merely a suggested floor price.

The Court finds that each of the herein petitions raises distinct issues. The petitioner in G. R. No. 92013 objects to the alienation of the Roppongi property to anyone while the petitioner in G. R. No. 92047 adds as a principal objection the alleged unjustified bias of the Philippine government in favor of selling the property to non-Filipino

citizens and entities. These petitions have been consolidated and are resolved at the same time for the objective is the same -- to stop the sale of the Roppongi property.

The petitioner in G. R. No. 92013 raises the following issues:

- (1) Can the Roppongi property and others of its kind be alienated by the Philippine Government?; and
- (2) Does the Chief Executive, her officers and agents, have the authority and jurisdiction, to sell the Roppongi property?

Petitioner Dionisio Ojeda in G. R. No. 92047, apart from questioning the authority of the government to alienate the Roppongi property assails the constitutionality of Executive Order No. 296 in making the property available for sale to non-Filipino citizens and entities. He also questions the bidding procedures of the Committee on the Utilization or Disposition of Philippine Government Properties in Japan for being discriminatory against Filipino citizens and Filipino-owned entities by denying them the right to be informed about the bidding requirements.

II

In G. R. No. 92013, petitioner Laurel asserts that the Roppongi property and the related lots were acquired as part of the reparations from the Japanese government for diplomatic and consular use by the Philippine government. Vice-President Laurel states that the Roppongi property is classified as one of public dominion, and not of private ownership under Article 420 of the Civil Code (See *infra*).

The petitioner submits that the Roppongi property comes under “property intended for public service” in paragraph 2 of the above provision. He states that being one of public dominion, no ownership by any one can attach to it, not even by the State. The Roppongi and related properties were acquired for “sites for chancery, diplomatic, and consular quarters, buildings and other improvements” (Second Year Reparations Schedule). The petitioner states that they continue to be intended for a necessary service. They are held by the State in anticipation of an opportune use. (Citing 3 Manresa 65-66). Hence, it cannot be appropriated, is outside the commerce of man, or to put it in more simple terms, it cannot be alienated nor be the subject matter of contracts (Citing *Municipality of Cavite v. Rojas*, 30 Phil. 20 [1915]). Noting the non-use of the Roppongi property at the moment, the petitioner avers that the same remains property of public dominion so long as the government has not used it for other purposes nor adopted any measure constituting a removal of its original purpose or use.

The respondents, for their part, refute the petitioner’s contention by saying that the subject property is not governed by our Civil Code but by the laws of Japan where the property is located. They rely upon the rule of *lex situs* which is used in determining the applicable law regarding the acquisition, transfer and devolution of the title to a property. They also invoke Opinion No. 21, Series of 1988, dated January 27, 1988 of the Secretary of Justice which used the *lex situs* in explaining the inapplicability of Philippine law regarding a property situated in Japan.

The respondents add that even assuming for the sake of argument that the Civil Code is applicable, the Roppongi property has ceased to become property of public dominion. It has become patrimonial property because it has not been used for public service or for diplomatic purposes for over thirteen (13) years now (Citing Article 422, Civil Code) and because the intention by the Executive Department and the Congress to convert it to private use has been manifested by overt acts, such as, among others: (1) the transfer of the Philippine Embassy to Nampaidai; (2) the issuance of administrative orders for the possibility of alienating the four government properties in Japan; (3) the issuance of Executive Order No. 296; (4) the enactment by the Congress of Rep. Act No. 6657 [the Comprehensive Agrarian Reform Law] on June 10, 1988 which contains a provision stating that funds may be taken from the sale of Philippine properties in foreign countries; (5) the holding of the public bidding of the Roppongi property but which failed; (6) the deferment by the Senate in Resolution No. 55 of the bidding to a

future date; thus an acknowledgment by the Senate of the government's intention to remove the Roppongi property from the public service purpose; and (7) the resolution of this Court dismissing the petition in *Ojeda v. Bidding Committee, et al.*, G. R. No. 87478 which sought to enjoin the second bidding of the Roppongi property scheduled on March 30, 1989.

III

In G. R. No. 92047, petitioner Ojeda once more asks this Court to rule on the constitutionality of Executive Order No. 296. He had earlier filed a petition in G. R. No. 87478 which the Court dismissed on August 1, 1989. He now avers that the executive order contravenes the constitutional mandate to conserve and develop the national patrimony stated in the Preamble of the 1987 Constitution. It also allegedly violates:

- (1) The reservation of the ownership and acquisition of alienable lands of the public domain to Filipino citizens. (Sections 2 and 3, Article XII, Constitution; Sections 22 and 23 of Commonwealth Act 141).
- (2) The preference for Filipino citizens in the grant of rights, privileges and concessions covering the national economy and patrimony (Section 10, Article VI, Constitution);
- (3) The protection given to Filipino enterprises against unfair competition and trade practices;
- (4) The guarantee of the right of the people to information on all matters of public concern (Section 7, Article III, Constitution);
- (5) The prohibition against the sale to non-Filipino citizens or entities not wholly owned by Filipino citizens of capital goods received by the Philippines under the Reparations Act (Sections 2 and 12 of Rep. Act No. 1789); and
- (6) The declaration of the state policy of full public disclosure of all transactions involving public interest (Section 28, Article II, Constitution).

Petitioner Ojeda warns that the use of public funds in the execution of an unconstitutional executive order is a misapplication of public funds. He states that since the details of the bidding for the Roppongi property were never publicly disclosed until February 15, 1990 (or a few days before the scheduled bidding), the bidding guidelines are available only in Tokyo, and the accomplishment of requirements and the selection of qualified bidders should be done in Tokyo, interested Filipino citizens or entities owned by them did not have the chance to comply with Purchase Offer Requirements on the Roppongi. Worse, the Roppongi shall be sold for a minimum price of \$225 million from which price capital gains tax under Japanese law of about 50 to 70% of the floor price would still be deducted.

IV

The petitioners and respondents in both cases do not dispute the fact that the Roppongi site and the three related properties were acquired through reparations agreements, that these were assigned to the government sector and that the Roppongi property itself was specifically designated under the Reparations Agreement to house the Philippine Embassy.

The nature of the Roppongi lot as property for public service is expressly spelled out. It is dictated by the terms of the Reparations Agreement and the corresponding contract of procurement which bind both the Philippine government and the Japanese government.

There can be no doubt that it is of public dominion unless it is convincingly shown that the property has become

patrimonial. This, the respondents have failed to do.

As property of public dominion, the Roppongi lot is outside the commerce of man. It cannot be alienated. Its ownership is a special collective ownership for general use and enjoyment, an application to the satisfaction of collective needs, and resides in the social group. The purpose is not to serve the State as a juridical person, but the citizens; it is intended for the common and public welfare and cannot be the object of appropriation. (Taken from 3 Manresa, 66-69; cited in Tolentino, Commentaries on the Civil Code of the Philippines, 1963 Edition, Vol. II, p. 26).

The applicable provisions of the Civil Code are:

“ART. 419. Property is either of public dominion or of private ownership.

“ART. 420. The following things are property of public dominion:

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

“(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

“ART. 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.”

The Roppongi property is correctly classified under paragraph 2 of Article 420 of the Civil Code as property belonging to the State and intended for some public service.

Has the intention of the government regarding the use of the property been changed because the lot has been idle for some years? Has it become patrimonial?

The fact that the Roppongi site has not been used for a long time for actual Embassy service does not automatically convert it to patrimonial property. Any such conversion happens only if the property is withdrawn from public use (*Cebu Oxygen and Acetylene Co. v. Bercilles*, 66 SCRA 481 [1975]). A property continues to be part of the public domain, not available for private appropriation or ownership “until there is a formal declaration on the part of the government to withdraw it from being such (*Ignacio v. Director of Lands*, 108 Phil. 335 [1960]).

The respondents enumerate various pronouncements by concerned public officials insinuating a change of intention. We emphasize, however, that an abandonment of the intention to use the Roppongi property for public service and to make it patrimonial property under Article 422 of the Civil Code must be definite. Abandonment cannot be inferred from the non-use alone specially if the non-use was attributable not to the government’s own deliberate and indubitable will but to a lack of financial support to repair and improve the property (See *Heirs of Felino Santiago v. Lazaro*, 166 SCRA 368 [1988]). Abandonment must be a certain and positive act based on correct legal premises.

A mere transfer of the Philippine Embassy to Nampeidai in 1976 is not relinquishment of the Roppongi property’s original purpose. Even the failure by the government to repair the building in Roppongi is not abandonment since as earlier stated, there simply was a shortage of government funds. The recent Administrative Orders authorizing a study of the status and conditions of government properties in Japan were merely directives for investigation but did not in any way signify a clear intention to dispose of the properties.

Executive Order No. 296, though its title declares an “authority to sell”, does not have a provision in its text expressly authorizing the sale of the four properties procured from Japan for the government sector. The executive

order does not declare that the properties lost their public character. It merely intends to make the properties available to foreigners and not to Filipinos alone in case of a sale, lease or other disposition. It merely eliminates the restriction under Rep. Act No. 1789 that reparations goods may be sold only to Filipino citizens and one hundred (100%) percent Filipino-owned entities. The text of Executive Order No. 296 provides:

“Section 1. The provisions of Republic Act No. 1789, as amended, and of other laws to the contrary notwithstanding, the abovementioned properties can be made available for sale, lease or any other manner of disposition to non-Filipino citizens or to entities owned by non-Filipino citizens.”

Executive Order No. 296 is based on the wrong premise or assumption that the Roppongi and the three other properties were earlier converted into alienable real properties. As earlier stated, Rep. Act No. 1789 differentiates the procurements for the government sector and the private sector (Sections 2 and 12, Rep. Act No. 1789). Only the private sector properties can be sold to end-users who must be Filipinos or entities owned by Filipinos. It is this nationality provision which was amended by Executive Order No. 296.

Section 63 (c) of Rep. Act. No. 6657 (the CARP Law) which provides as one of the sources of funds for its implementation, the proceeds of the disposition of the properties of the Government in foreign countries, did not withdraw the Roppongi property from being classified as one of public dominion when it mentions Philippine properties abroad. Section 63 (c) refers to properties which are alienable and not to those reserved for public use or service. Rep. Act No. 6657, therefore, does not authorize the Executive Department to sell the Roppongi property. It merely enumerates possible sources of future funding to augment (as and when needed) the Agrarian Reform Fund created under Executive Order No. 299. Obviously any property outside of the commerce of man cannot be tapped as a source of funds.

The respondents try to get around the public dominion character of the Roppongi property by insisting that Japanese law and not our Civil Code should apply.

It is exceedingly strange why our top government officials, of all people, should be the ones to insist that in the sale of extremely valuable government property, Japanese law and not Philippine law should prevail. The Japanese law -- its coverage and effects, when enacted, and exceptions to its provisions -- is not presented to the Court. It is simply asserted that the *lex loci rei sitae* or Japanese law should apply without stating what that law provides. It is assumed on faith that Japanese law would allow the sale.

We see no reason why a conflict of law rule should apply when no conflict of law situation exists. A conflict of law situation arises only when: (1) There is a dispute over the title or ownership of an immovable, such that the capacity to take and transfer immovables, the formalities of conveyance, the essential validity and effect of the transfer, or the interpretation and effect of a conveyance, are to be determined (See Salonga, *Private International Law*, 1981 ed., pp. 377-383); and (2) A foreign law on land ownership and its conveyance is asserted to conflict with a domestic law on the same matters. Hence, the need to determine which law should apply.

In the instant case, none of the above elements exists.

The issues are not concerned with validity of ownership or title. There is no question that the property belongs to the Philippines. The issue is the authority of the respondent officials to validly dispose of property belonging to the State. And the validity of the procedures adopted to effect its sale. This is governed by Philippine law. The rule of *lex situs* does not apply.

The assertion that the opinion of the Secretary of Justice sheds light on the relevance of the *lex situs* rule is misplaced. The opinion does not tackle the alienability of the real properties procured through reparations nor the existence in what body of the authority to sell them. In discussing who are capable of acquiring the lots, the

Secretary merely explains that it is the foreign law which should determine who can acquire the properties so that the constitutional limitation on acquisition of lands of the public domain to Filipino citizens and entities wholly owned by Filipinos is inapplicable. We see no point in belaboring whether or not this opinion is correct. Why should we discuss who can acquire the Roppongi lot when there is no showing that it can be sold?

The subsequent approval on October 4, 1988 by President Aquino of the recommendation by the investigating committee to sell the Roppongi property was premature or, at the very least, conditioned on a valid change in the public character of the Roppongi property. Moreover, the approval does not have the force and effect of law since the President already lost her legislative powers. The Congress had already convened for more than a year.

Assuming for the sake of argument, however, that the Roppongi property is no longer of public dominion, there is another obstacle to its sale by the respondents.

There is no law authorizing its conveyance.

Section 79 (f) of the Revised Administrative Code of 1917 provides:

“Section 79 (f). Conveyances and contracts to which the Government is a party. In cases in which the Government of the Republic of the Philippines is a party to any deed or other instrument conveying the title to real estate or to any other property the value of which in excess of one hundred thousand pesos, the respective Department Secretary shall prepare the necessary papers which, together with the proper recommendations, shall be submitted to the Congress of the Philippines for approval by the same. Such deed, instrument, or contract shall be executed and signed by the President of the Philippines on behalf of the Government of the Philippines unless the authority therefor be expressly vested by law in another officer.” (Underlining supplied)

The requirement has been retained in Section 48, Book I of the Administrative Code of 1987 (Executive Order No. 292).

“SEC. 48. Official Authorized to Convey Real Property. - Whenever real property of the Government is authorized by law to be conveyed, the deed of conveyance shall be executed in behalf of the government by the following:

“(1) For property belonging to and titled in the name of the Republic of the Philippines, by the President, unless the authority therefor is expressly vested by law in another officer.

“(2) For property belonging to the Republic of the Philippines but titled in the name of any political subdivision or of any corporate agency or instrumentality, by the executive head of the agency or instrumentality.” (Underlining supplied)

It is not for the President to convey valuable real property of the government on his or her own sole will. Any such conveyance must be authorized and approved by a law enacted by the Congress. It requires executive and legislative concurrence.

Resolution No. 55 of the Senate dated June 8, 1989, asking for the deferment of the sale of the Roppongi property does not withdraw the property from public domain much less authorize its sale. It is a mere resolution; it is not a formal declaration abandoning the public character of the Roppongi property. In fact, the Senate Committee on Foreign Relations is conducting hearings on Senate Resolution No. 734 which raises serious policy considerations and calls for a fact-finding investigation of the circumstances behind the decision to sell the Philippine government properties in Japan.

The resolution of this Court in *Ojeda v. Bidding Committee, et al.*, supra, did not pass upon the constitutionality of Executive Order No. 296. Contrary to respondents' assertion, we did not uphold the authority of the President to sell the Roppongi property. The Court stated that the constitutionality of the executive order was not the real

issue and that resolving the constitutional question was “neither necessary nor finally determinative of the case.” The Court noted that “[W]hat petitioner ultimately questions is the use of the proceeds of the disposition of the Roppongi property.” In emphasizing that “the decision of the Executive to dispose of the Roppongi property to finance the CARP x x x cannot be questioned” in view of Section 63 (c) of Rep. Act No. 6657, the Court did not acknowledge the fact that the property became alienable nor did it indicate that the President was authorized to dispose of the Roppongi property. The resolution should be read to mean that in case the Roppongi property is re-classified to be patrimonial and alienable by authority of law, the proceeds of a sale may be used for national economic development projects including the CARP.

Moreover, the sale in 1989 did not materialize. The petitions before us question the proposed 1990 sale of the Roppongi property. We are resolving the issues raised in these petitions, not the issues raised in 1989.

Having declared a need for a law or formal declaration to withdraw the Roppongi property from public domain to make it alienable and a need for legislative authority to allow the sale of the property, we see no compelling reason to tackle the constitutional issues raised by petitioner Ojeda.

The Court does not ordinarily pass upon constitutional questions unless these questions are properly raised in appropriate cases and their resolution is necessary for the determination of the case (*People v. Vera*, 65 Phil. 56 [1937]). The Court will not pass upon a constitutional question although properly presented by the record if the case can be disposed of on some other ground such as the application of a statute or general law (*Siler v. Louisville and Nashville R. Co.*, 213 U. S. 175, [1909], *Railroad Commission v. Pullman Co.*, 312 U. S. 496 [1941]).

The petitioner in G. R. No. 92013 states why the Roppongi property should not be sold:

The Roppongi property is not just like any piece of property. It was given to the Filipino people in reparation for the lives and blood of Filipinos who died and suffered during the Japanese military occupation, for the suffering of widows and orphans who lost their loved ones and kindred, for the homes and other properties lost by countless Filipinos during the war. The Tokyo properties are a monument to the bravery and sacrifice of the Filipino people in the face of an invader; like the monuments of Rizal, Quezon, and other Filipino heroes, we do not expect economic or financial benefits from them. But who would think of selling these monuments? Filipino honor and national dignity dictate that we keep our properties in Japan as memorials to the countless Filipinos who died and suffered. Even if we should become paupers we should not think of selling them. For it would be as if we sold the lives and blood and tears of our countrymen. (Rollo G. R. No. 92013, p. 147)

The petitioner in G. R. No. 92047 also states:

“Roppongi is no ordinary property. It is one ceded by the Japanese government in atonement for its past belligerence, for the valiant sacrifice of life and limb and for deaths, physical dislocation and economic devastation the whole Filipino people endured in World War II.

“It is for what it stands for, and for what it could never bring back to life, that its significance today remains undimmed, inspite of the lapse of 45 years since the war ended, inspite of the passage of 32 years since the property passed on to the Philippine government.

“Roppongi is a reminder that cannot -- should not -- be dissipated. x x x.” (Rollo - 92047, p. 9)

It is indeed true that the Roppongi property is valuable not so much because of the inflated prices fetched by real property in Tokyo but more so because of its symbolic value to all Filipinos - veterans and civilians alike. Whether or not the Roppongi and related properties will eventually be sold is a policy determination where both the President and Congress must concur. Considering the properties’ importance and value, the laws on conversion and disposition of property of public dominion must be faithfully followed.

WHEREFORE, IN VIEW OF THE FOREGOING, the petitions are GRANTED. A writ of prohibition is issued enjoining the respondents from proceeding with the sale of the Roppongi property in Tokyo, Japan. The February 20, 1990 Temporary Restraining Order is made PERMANENT.

SO ORDERED.

Melencio-Herrera, Paras, Bidin, Griño-Aquino, and Regalado, JJ., concur.

Fernan (C.J.), Narvasa, Gancayco, Cortes, and Medialdea, JJ., join Justice Feliciano's dissent.

Cruz, J., See concurrence.

Feliciano, J., See separate dissent.

Padilla, J., See concurring statement.

Sarmiento, J., See concurring opinion.

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CONCURRING OPINION

CRUZ, J.:

I concur completely with the excellent ponencia of Mr. Justice Gutierrez and will add the following observations only for emphasis.

It is clear that the respondents have failed to show the President's legal authority to sell the Roppongi property. When asked to do so at the hearing on these petitions, the Solicitor General was at best ambiguous, although I must add in fairness that this was not his fault. The fact is that there is no such authority. Legal expertise alone cannot conjure that statutory permission out of thin air.

Exec. Order No. 296, which reads like so much legislative double talk, does not contain such authority. Neither does Rep. Act No. 6657, which simply allows the proceeds of the sale of our properties abroad to be used for the comprehensive agrarian reform program. Senate Res. No. 55 was a mere request for the deferment of the scheduled sale of the Roppongi property, possibly to stop the transaction altogether; and in any case it is not a law. The sale of the said property may be authorized only by Congress through a duly enacted statute, and there is no such law.

Once again, we have affirmed the principle that ours is a government of laws and not of men, where every public official, from the lowest to the highest, can act only by virtue of a valid authorization. I am happy to note that in the several cases where this Court has ruled against her, the President of the Philippines has submitted to this principle with becoming grace.

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Dissenting Opinion

Feliciano, J.:

With regret, I find myself unable to share the conclusions reached by Mr. Justice Hugo E. Gutierrez, Jr.

For purposes of this separate opinion, I assume that the piece of land located in 306 Ropponggi, 5-Chome, Minato-ku, Tokyo, Japan (hereinafter referred to as the "Ropponggi property") may be characterized as property of public dominion, within the meaning of Article 420 (2) of the Civil Code:

"[Property] which belong[s] to the State, without being for public use, and are intended for some public service
---."

It might not be amiss, however, to note that the appropriateness of trying to bring within the confines of the simple three-fold classification found in Article 420 of the Civil Code ("property for public use", property "intended for some public service" and property intended "for the development of the national wealth") all property owned by the Republic of the Philippines whether found within the territorial boundaries of the Republic or located within the territory of another sovereign State, is not self-evident. The first item of the classification -- property intended for public use -- can scarcely be properly applied to property belonging to the Republic but found within the territory of another State. The third item of the classification -- property intended for the development of the national wealth -- is illustrated, in Article 339 of the Spanish Civil Code of 1889, by mines or mineral properties. Again, mineral lands owned by a sovereign State are rarely, if ever, found within the territorial base of another sovereign State. The task of examining in detail the applicability of the classification set out in Article 420 of our Civil Code to property that the Philippines happens to own outside its own boundaries must, however, be left to academicians.

For present purposes, too, I agree that there is no question of conflict of laws that is, at the present time, before this Court. The issues before us relate essentially to authority to sell the Ropponggi property so far as Philippine law is concerned.

The majority opinion raises two (2) issues: (a) whether or not the Ropponggi property has been converted into patrimonial property or property of the private domain of the State; and (b) assuming an affirmative answer to (a), whether or not there is legal authority to dispose of the Ropponggi property.

I

Addressing the first issue of conversion of property of public dominion intended for some public service, into property of the private domain of the Republic, it should be noted that the Civil Code does not address the question of who has authority to effect such conversion. Neither does the Civil Code set out or refer to any procedure for such conversion.

Our case law, however, contains some fairly explicit pronouncements on this point, as Justice Sarmiento has pointed out in his concurring opinion. In *Ignacio v. Director of Lands* (108 Phils. 335 [1960]), petitioner Ignacio argued that if the land in question formed part of the public domain, the trial court should have declared the same no longer necessary for public use or public purposes and which would, therefore, have become disposable and available for private ownership. Mr. Justice Montemayor, speaking for the Court, said:

"Article 4 of the Law of Waters of 1866 provides that when a portion of the shore is no longer washed by the waters of the sea and is not necessary for purposes of public utility, or for the establishment of special industries, or for coast-guard service, the government shall declare it to be the property of the owners of the

estates adjacent thereto and as an increment thereof. We believe that only the executive and possibly the legislative departments have the authority and the power to make the declaration that any land so gained by the sea, is not necessary for purposes of public utility, or for the establishment of special industries, or for coast-guard service. If no such declaration has been made by said departments, the lot in question forms part of the public domain." (Natividad v. Director of Lands, supra.)

The reason for this pronouncement, according to this Tribunal in the case of Vicente Joven y Monteverde v. Director of Lands, 93 Phil., 134 (cited in Velayo's Digest, Vol. 1, p. 52).

'x x x is undoubtedly that the courts are neither primarily called upon, nor indeed in a position to determine whether any public land are to be used for the purposes specified in Article 4 of the Law of Waters.'

Consequently, until a formal declaration on the part of the Government, through the executive department or the Legislature, to the effect that the land in question is no longer needed for coast-guard service, for public use or for special industries, they continue to be part of the public domain, not available for private appropriation or ownership." (108 Phil. at 338-339; underscoring supplied)

Thus, under Ignacio, either the Executive Department or the Legislative Department may convert property of the State of public dominion into patrimonial property of the State. No particular formula or procedure of conversion is specified either in statute law or in case law. Article 422 of the Civil Code simply states that: "Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State". I respectfully submit, therefore, that the only requirement which is legitimately imposable is that the intent to convert must be reasonably clear from a consideration of the act or acts of the Executive Department or of the Legislative Department which are said to have effected such conversion.

The same legal situation exists in respect of conversion of property of public dominion belonging to municipal corporations, i.e., local governmental units, into patrimonial property of such entities. In Cebu Oxygen Acetylene v. Bercilles (66 SCRA 481 [1975]), the City Council of Cebu by resolution declared a certain portion of an existing street as an abandoned road, "the same not being included in the city development plan". Subsequently, by another resolution, the City Council of Cebu authorized the acting City Mayor to sell the land through public bidding. Although there was no formal and explicit declaration of conversion of property for public use into patrimonial property, the Supreme Court said:

"x x x x x x x x x x

(2) Since that portion of the city street subject of petitioner's application for registration of title was withdrawn from public use, it follows that such withdrawn portion becomes patrimonial property which can be the object of an ordinary contract.

Article 422 of the Civil Code expressly provides that 'Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.'

Besides, the Revised Charter of the City of Cebu heretofore quoted, in very clear and unequivocal terms, states that 'Property thus withdrawn from public servitude may be used or conveyed for any purpose for which other real property belonging to the City may be lawfully used or conveyed.'

Accordingly, the withdrawal of the property in question from public use and its subsequent sale to the petitioner is valid. Hence, the petitioner has a registrable title over the lot in question." (66 SCRA at 484; underscoring supplied)

Thus, again as pointed out by Sarmiento, J. in his separate opinion, in the case of property owned by municipal corporations simple non-use or the actual dedication of public property to some use other than "public use" or some "public service", was sufficient legally to convert such property into patrimonial property (Municipality of

Oas v. Roa, 7 Phil. 20 [1906]; Municipality of Hinunganan v. Director of Lands, 24 Phil. 124 [1913]; Province of Zamboanga del Norte v. City of Zamboanga, 22 SCRA 1334 (1968).

I would also add that such was the case not only in respect of property of municipal corporations but also in respect of property of the State itself. Manresa in commenting on Article 341 of the 1889 Spanish Civil Code which has been carried over verbatim into our Civil Code by Article 422 thereof, wrote:

"La dificultad mayor en todo esto estriba, naturalmente, en fijar el momento en que los bienes de dominio publico dejan de serlo. Si la Administracion o la autoridad competente legislativa realizan un acto en virtud del cual cesa el destino o uso publico de los bienes de que se trata, naturalmente la dificultad queda desde el primer momento resuelta. Hay un punto de partida cierto para iniciar las relaciones juridicas a que pudiera haber lugar. Pero puede ocurrir que no haya tal declaracion expresa, legislativa or administrativa, y, sin embargo, cesar de hecho el destino publico de los bienes; ahora bien, en este caso, y para los efectos juridicos que resultan de entrar la cosa en el comercio de los hombres, ¿se entendera que se ha verificado la conversion de los bienes de dominio publico en bienes patrimoniales?

El citado tratadista Ricci opina, respecto del antiguo Codigo italiano, por la afirmativa, y por nuestra parte creemos que tal debe ser la solucion. El destino de las cosas no depende tanto de una declaracion expresa como del uso publico de las mismas, y cuando el uso publico cese con respecto de determinados bienes, cesa tambien su situacion en el dominio publico. Si una fortaleza en ruina se abandona y no se repara, si un trozo de la via publica se abandona tambien por constituir otro nuevo en mejores condiciones ambos bienes cesan de estar adscritos al uso comun o a la defensa nacional, y ambos bienes pasan el patrimonio del Estado, y su regimen juridico es el del presente Codigo, y las leyes especiales mas o menos administrativas." (3 Manresa, Comentarios al Codigo Civil Español, p. 128 (7a ed.; 1952) (Underscoring supplied)

The majority opinion says that none of the executive acts pointed to by the Government purported, expressly or definitely, to convert the Ropponggi property into patrimonial property of the Republic. Assuming that to be the case, it is respectfully submitted that the cumulative effect of the executive acts here involved was to convert property originally intended for and devoted to public service into patrimonial property of the State, that is, property susceptible of disposition to and appropriation by private persons. These executive acts, in their totality if not each individual act, make crystal clear the intent of the Executive Department to effect such conversion. These executive acts include:

(a) Administrative Order No. 3 dated 11 August 1985, which created a Committee to study the disposition/utilization of the Government's property in Japan. The Committee was composed of officials of the Executive Department: the Executive Secretary; the Philippine Ambassador to Japan; and representatives of the Department of Foreign Affairs and the Asset Privatization Trust. On 19 September 1988, the Committee recommended to the President the sale of one of the lots (the lot specifically in Ropponggi) through public bidding. On 4 October 1988, the President approved the recommendation of the Committee.

On 14 December 1988, the Philippine Government by diplomatic note informed the Japanese Ministry of Foreign Affairs of the Republic's intention to dispose of the property in Ropponggi. The Japanese Government through its Ministry of Foreign Affairs replied that it interposed no objection to such disposition by the Republic. Subsequently, the President and the Committee informed the leaders of the House of Representatives and of the Senate of the Philippines of the proposed disposition of the Ropponggi property.

(b) Executive Order No. 296, which was issued by the President on 25 July 1987. Assuming that the majority opinion is right in saying that Executive Order No. 296 is insufficient to authorize the sale of the Ropponggi property, it is here submitted with respect that Executive Order No. 296 is more than sufficient to indicate an intention to convert the property previously devoted to public service into patrimonial property that is capable of being sold or otherwise disposed of.

(c) Non-use of the Ropponggi lot for fourteen (14) years for diplomatic or for any other public purposes. Assuming (but only arguing) that non-use does not, by itself, automatically convert the property into patrimonial property, I respectfully urge that prolonged non-use, conjoined with the other factors here listed, was legally effective to convert the lot in Ropponggi into patrimonial property of the State. Actually, as already pointed out, case law involving property of municipal corporations is to the effect that simple non-use or the actual dedication of public property to some use other than public use or public service, was sufficient to convert such property into patrimonial property of the local governmental entity concerned. Also as pointed out above, Manresa reached the same conclusion in respect of conversion of property of the public domain of the State into property of the private domain of the State.

The majority opinion states that "abandonment cannot be inferred from the non-use alone especially if the non-use was attributable not to the Government's own deliberate and indubitable will but to lack of financial support to repair and improve the property" (Majority Opinion, p. 13). With respect, it may be stressed that there is no abandonment involved here, certainly no abandonment of property or of property rights. What is involved is the change of the classification of the property from property of the public domain into property of the private domain of the State. Moreover, if for fourteen (14) years, the Government did not see fit to appropriate whatever funds were necessary to maintain the property in Ropponggi in a condition suitable for diplomatic representation purposes, such circumstance may, with equal logic, be construed as a manifestation of the crystallizing intent to change the character of the property.

(d) On 30 March 1989, a public bidding was in fact held by the Executive Department for the sale of the lot in Ropponggi. The circumstance that this bidding was not successful certainly does not argue against an intent to convert the property involved into property that is disposable by bidding.

The above set of events and circumstances makes no sense at all if it does not, as a whole, show at least the intent on the part of the Executive Department (with the knowledge of the Legislative Department) to convert the property involved into patrimonial property that is susceptible of being sold.

II

Having reached an affirmative answer in respect of the first issue, it is necessary to address the second issue of whether or not there exists legal authority for the sale or disposition of the Ropponggi property.

The majority opinion refers to Section 79(f) of the Revised Administrative Code of 1917 which reads as follows:

"SEC. 79 (f). Conveyances and contracts to which the Government is a party. -- In cases in which the Government of the Republic of the Philippines is a party to any deed or other instrument conveying the title to real estate or to any other property the value of which is in excess of one hundred thousand pesos, the respective Department Secretary shall prepare the necessary papers which, together with the proper recommendations, shall be submitted to the Congress of the Philippines for approval by the same. Such deed, instrument, or contract shall be executed and signed by the President of the Philippines on behalf of the Government of the Philippines unless the authority therefor be expressly vested by law in another officer." (Underscoring supplied)

The majority opinion then goes on to state that: "[T]he requirement has been retained in Section 4, Book I of the Administrative Code of 1987 (Executive Order No. 292)" which reads:

"SEC. 48. Official Authorized to Convey Real Property. -- Whenever real property of the Government is authorized by law to be conveyed, the deed of conveyance shall be executed in behalf of the government by the following:

(1) For property belonging to and titled in the name of the Republic of the Philippines, by the President, unless the authority therefor is expressly vested by law in another officer.

(2) For property belonging to the Republic of the Philippines but titled in the name of any political subdivision or of any corporate agency or instrumentality, by the executive head of the agency or instrumentality." (Underscoring supplied)

Two points need to be made in this connection. Firstly, the requirement of obtaining specific approval of Congress when the price of the real property being disposed of is in excess of One Hundred Thousand Pesos (P100,000.00) under the Revised Administrative Code of 1917, has been deleted from Section 48 of the 1987 Administrative Code. What Section 48 of the present Administrative Code refers to is authorization by law for the conveyance. Section 48 does not purport to be itself a source of legal authority for conveyance of real property of the Government. For Section 48 merely specifies the official authorized to execute and sign on behalf of the Government the deed of conveyance in case of such a conveyance.

Secondly, examination of our statute books shows that authorization by law for disposition of real property of the private domain of the Government, has been granted by Congress both in the form of (a) a general, standing authorization for disposition of patrimonial property of the Government; and (b) specific legislation authorizing the disposition of particular pieces of the Government's patrimonial property.

Standing legislative authority for the disposition of land of the private domain of the Philippines is provided by Act No. 3038, entitled "An Act Authorizing the Secretary of Agriculture and Natural Resources to Sell or Lease Land of the Private Domain of the Government of the Philippine Islands (now Republic of the Philippines)", enacted on 9 March 1922. The full text of this statute is as follows:

"Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:

SECTION 1. The Secretary of Agriculture and Natural Resources (now Secretary of the Environment and Natural Resources) is hereby authorized to sell or lease land of the private domain of the Government of the Philippine Islands, or any part thereof, to such persons, corporations or associations as are, under the provisions of Act Numbered Twenty-eight hundred and seventy-four, (now Commonwealth Act No. 141, as amended) known as the Public Land Act, entitled to apply for the purchase or lease of agricultural public land.

SECTION 2. The sale of the land referred to in the preceding section shall, if such land is agricultural, be made in the manner and subject to the limitations prescribed in chapters five and six, respectively, of said Public Land Act, and if it be classified differently, in conformity with the provisions of chapter nine of said Act: Provided, however, That the land necessary for the public service shall be exempt from the provisions of this Act.

SECTION 3. This Act shall take effect on its approval.

Approved, March 9, 1922." (Underscoring supplied)

Lest it be assumed that Act No. 3038 refers only to agricultural lands of the private domain of the State, it must be noted that Chapter 9 of the old Public Land Act (Act No. 2874) is now Chapter 9 of the present Public Land Act (Commonwealth Act No. 141, as amended) and that both statutes refer to: "any tract of land of the public domain which being neither timber nor mineral land, is intended to be used for residential purposes or for commercial or industrial purposes other than agricultural" (Underscoring supplied). In other words, the statute covers the sale or lease of residential, commercial or industrial land of the private domain of the State.

Implementing regulations have been issued for the carrying out of the provisions of Act No. 3038. On 21 December 1954, the then Secretary of Agriculture and Natural Resources promulgated Lands Administrative Orders Nos. 7-6 and 7-7 which were entitled, respectively: "Supplementary Regulations Governing the Sale of the Lands of the Private Domain of the Republic of the Philippines"; and "Supplementary Regulations Governing the

Lease of Lands of Private Domain of the Republic of the Philippines" (text in 51 O.G. 28-29 [1955]).

It is perhaps well to add that Act No. 3038, although now sixty-eight (68) years old, is still in effect and has not been repealed.[1]

Specific legislative authorization for disposition of particular patrimonial properties of the State is illustrated by certain earlier statutes. The first of these was Act No. 1120, enacted on 26 April 1904, which provided for the disposition of the friar lands, purchased by the Government from the Roman Catholic Church, to bona fide settlers and occupants thereof or to other persons. In *Jacinto v. Director of Lands* (49 Phil. 853 [1926]), these friar lands were held to be private and patrimonial properties of the State. Act No. 2360, enacted on 28 February 1914, authorized the sale of the San Lazaro Estate located in the City of Manila, which had also been purchased by the Government from the Roman Catholic Church. In January 1916, Act No. 2555 amended Act No. 2360 by including therein all lands and buildings owned by the Hospital and the Foundation of San Lazaro theretofor leased by private persons, and which were also acquired by the Philippine Government.

After the enactment in 1922 of Act No. 3038, there appears, to my knowledge, to be only one statute authorizing the President to dispose of a specific piece of property. This statute is Republic Act No. 905, enacted on 20 June 1953, which authorized the President to sell an identified parcel of land of the private domain of the National Government to the National Press Club of the Philippines, and to other recognized national associations of professionals with academic standing, for the nominal price of P1.00. It appears relevant to note that Republic Act No. 905 was not an outright disposition in perpetuity of the property involved; it provided for reversion of the property to the National Government in case the National Press Club stopped using it for its headquarters. What Republic Act No. 905 authorized was really a donation, and not a sale.

The basic submission here made is that Act No. 3038 provides standing legislative authorization for disposition of the Ropponggi property which, in my view, has been converted into patrimonial property of the Republic.[2]

To some, the submission that Act No. 3038 applies not only to lands of the private domain of the State located in the Philippines but also to patrimonial property found outside the Philippines, may appear strange or unusual. I respectfully submit that such position is not any more unusual or strange than the assumption that Article 420 of the Civil Code applies not only to property of the Republic located within Philippine territory but also to property found outside the boundaries of the Republic.

It remains to note that under the well-settled doctrine that heads of Executive Departments are alter egos of the President (*Villena v. Secretary of the Interior*, 67 Phil. 451 [1939]), and in view of the constitutional power of control exercised by the President over department heads (Article VII, Section 17, 1987 Constitution), the President herself may carry out the function or duty that is specifically lodged in the Secretary of the Department of Environment and Natural Resources (*Araneta v. Gatmaitan*, 101 Phil. 328 [1957]). At the very least, the President retains the power to approve or disapprove the exercise of that function or duty when done by the Secretary of Environment and Natural Resources.

It is hardly necessary to add that the foregoing analyses and submissions relate only to the austere question of existence of legal power or authority. They have nothing to do with much-debated questions of wisdom or propriety or relative desirability either of the proposed disposition itself or of the proposed utilization of the anticipated proceeds of the property involved. These latter types of considerations lie within the sphere of responsibility of the political departments of government -- the Executive and the Legislative authorities.

For all the foregoing, I vote to dismiss the Petitions for Prohibition in both G.R. Nos. 92013 and 92047.

[1] We are orally advised by the Office of the Director of Lands that Act No. 3038 is very much in effect and that the Bureau of Lands continues to date to act under it. See also, in this connection, Sections 2 and 4 of Republic Act No. 477, enacted 9 June 1950 and as last amended by B.P. Blg. 233. This statute governs the disposition of lands of the public domain and of the private domain of the State, including lands previously vested in the United States Alien Property Custodian and transferred to the Republic of the Philippines.

[2] Since Act No. 3038 established certain qualifications for applicants for purchase or lease of land of private domain of the government, it is relevant to note that Executive Order No. 296, promulgated at a time when the President was still exercising legislative authority, provides as follows:

"Sec. 1. The provisions of Republic Act No. 1789, as amended, and of other laws, to the contrary notwithstanding, the above mentioned properties can be made available for sale, lease or any other manner of disposition to non-Filipino citizens." (Underscoring supplied)

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CONCURRING STATEMENT

PADILLA, J.:

I concur in the decision penned by Mr. Justice Gutierrez, Jr., I only wish to make a few observations which could help in further clarifying the issues.

Under our tri-partite system of government ordained by the Constitution, it is Congress that lays down or determines policies. The President executes such policies. The policies determined by Congress are embodied in legislative enactments that have to be approved by the President to become law. The President, of course, recommends to Congress the approval of policies but, in the final analysis, it is Congress that is the policy-determining branch of government.

The judiciary interprets the laws and, in appropriate cases, determines whether the laws enacted by Congress and approved by the President, and presidential acts implementing such laws, are in accordance with the Constitution.

The Roppongi property was acquired by the Philippine government pursuant to the reparations agreement between the Philippine and Japanese governments. Under such agreement, this property was acquired by the Philippine government for a specific purpose, namely, to serve as the site of the Philippine Embassy in Tokyo, Japan. Consequently, Roppongi is a property of public dominion and intended for public service, squarely falling within that class of property under Art. 420 of the Civil Code, which provides:

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

(1) x x x

(2) "Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth. (339a)"

Public dominion property intended for public service cannot be alienated unless the property is first transformed

into private property of the state otherwise known as patrimonial property of the state.[1] The transformation of public dominion property to state patrimonial property involves, to my mind, a policy decision. It is a policy decision because the treatment of the property varies according to its classification. Consequently, it is Congress which can decide and declare the conversion of Roppongi from a public dominion property to a state patrimonial property. Congress has made no such decision or declaration.

Moreover, the sale of public property (once converted from public dominion to state patrimonial property) must be approved by Congress, for this again is a matter of policy (i.e. to keep or dispose of the property). Sec. 48, Book 1 of the Administrative Code of 1987 provides:

"SEC. 48. Official Authorized to Convey Real Property. - Whenever real property of the Government is authorized by law to be conveyed, the deed of conveyance shall be executed in behalf of the government by the following:

“(1) For property belonging to and titled in the name of the Republic of the Philippines, by the President, unless the authority therefor is expressly vested by law in another officer.

“(2) For property belonging to the Republic of the Philippines but titled in the name of any political subdivision or of any corporate agency or instrumentality, by the executive head of the agency or instrumentality.”
(Underlinings supplied)

But the record is bare of any congressional decision or approval to sell Roppongi. The record is likewise bare of any congressional authority extended to the President to sell Roppongi thru public bidding or otherwise.

It is, therefore, clear that the President cannot sell or order the sale of Roppongi thru public bidding or otherwise without a prior congressional approval, first, converting Roppongi from a public dominion property to a state patrimonial property, and, second, authorizing the President to sell the same.

ACCORDINGLY, my vote is to GRANT the petition and to make PERMANENT the temporary restraining order earlier issued by this Court.

[1] Art. 422 of the Civil Code provides:

"Property of public dominion, when no longer intended for public use or public service, shall form part of the patrimonial property of the State. (341a)

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CONCURRING OPINION

SARMIENTO, J.:

The central question, as I see it, is whether or not the so-called "Roppongi property" has lost its nature as property of public dominion, and hence, has become patrimonial property of the State. I understand that the parties are agreed that it was property intended for "public service" within the contemplation of paragraph (2), of Article 430,

of the Civil Code, and accordingly, land of State dominion, and beyond human commerce. The lone issue is in the light or supervening developments, that is, -- non-user thereof by the National Government (for diplomatic purposes) for the last thirteen years; the issuance of Executive Order No. 296 making it available for sale to any interested buyer; the promulgation of Republic Act No. 6657, the Comprehensive Agrarian Reform Law, making available for the program's financing, State assets sold; the approval by the President of the recommendation of the investigating committee formed to study the property's utilization; and the issuance of Resolution No. 55 of the Philippine Senate requesting for the deferment of its disposition -- it, "Roppongi", is still property of the public dominion, and if it is not, how it lost that character.

When land of the public dominion ceases to be one, or when the change takes place, is a question our courts have debated early. In a 1906 decision,[1] it was held that property of the public dominion, a public plaza in this instance, becomes patrimonial upon use thereof for purposes other than a plaza. In a later case,[2] this ruling was reiterated. Likewise, it has been held that land, originally private property, has become of public dominion upon its donation to the town and its conversion and use as a public plaza.[3] It is notable that under these three cases, the character of the property, and any change occurring therein, depends on the actual use to which it is dedicated.[4]

Much later, however, the Court held that "until a formal declaration on the part of the Government, through the executive department or the Legislative, to the effect that the land ... is no longer needed for [public] service, for public use or special industries, [it] continue[s] to be part of the public [dominion], not available for private expropriation or ownership." [5] So also, it was ruled that a political subdivision (the City of Cebu in this case) alone may declare (under its charter) a city road abandoned and thereafter, to dispose of it.[6]

In holding that there is "a need for a law or formal declaration to withdraw the Roppongi property from public domain to make it alienable and a land for legislative authority to allow the sale of the property," [7] the majority lays stress to the fact that: (1) An affirmative act--executive or legislative--is necessary to reclassify property of the public dominion, and (2) a legislative decree is required to make it alienable. It also clears the uncertainties brought about by earlier interpretations that the nature of property--whether public or patrimonial--is predicated on the manner it is actually used, or not used, and in the same breath, repudiates the Government's position that the continuous non-use of "Roppongi", among other arguments, for "diplomatic purposes", has turned it into State patrimonial property.

I feel that this view corresponds to existing pronouncements of this Court, among other things, that: (1) Property is presumed to be State property in the absence of any showing to the contrary; [8] (2) With respect to forest lands, the same continue to be lands of the public dominion unless and until reclassified by the Executive Branch of the Government; [9] and (3) All natural resources, under the Constitution, and subject to exceptional cases, belong to the State. [10]

I am elated that the Court has banished previous uncertainties.

[1] Municipality of Oas v. Roa, 7 Phil. 20 (1906).

[2] Municipality of Hinunangan v. Director of Lands, 24 Phil. 124 (1913). The property involved here was a fortress.

[3] Harty v. Municipality of Victoria, 13 Phil. 152 (1909).

[4] See also II TOLENTINO, CIVIL CODE OF THE PHILIPPINES 39 (1972 ed.), citing 3 Manresa 111. See also Province of Zamboanga del Norte v. City of Zamboanga, No. L-24440, March 28, 1968, 22 SCRA 1334.

[5] Ignacio v. Director of Lands, 108 Phil. 335, 339 (1960).

[6] Cebu Oxygen & Acetylene Co., Inc. vs. Bercilles, No. L-40474, August 29, 1975, 66 SCRA 481.

[7] G.R. Nos. 92013 & 92047, 21.

[8] Salas v. Jarencio, No. L-29788, August 30, 1972, 46 SCRA 734; Rabuco v. Villegas, No. L-24916, February 28, 1974, 55 SCRA 658.

[9] See Lianga Bay Logging Co., Inc. v. Lopez Enage, No. L-30637, July 16, 1987, 152 SCRA 80.

[10] CONST., art. XII, sec. 2.

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