

G.R. No. 194617 – LA TONDEÑA, INC., *petitioner* v. REPUBLIC OF THE PHILIPPINES, *respondent*.

Promulgated:

05 AUG 2015

Ateneo de Manila University

CONCURRING AND DISSENTING OPINION

BRION, J.

I **concur** with the **DENIAL** of the petition. I agree that petitioner La Tondeña, Inc. (*La Tondeña*) failed to comply with all the requirements for land registration under Section 48 (b) of Commonwealth Act No. 141¹ or the Public Land Act (*PLA*) in relation with Section 14 (1) of Presidential Decree No. 1529² or the Property Registration Decree (*PRD*).

In particular, I believe that the petition should be denied for the following reasons:

First, La Tondeña failed to prove that the property was already private at the time of its purchase.

Second, it could not have acquired any vested right over the property as of 1972 pursuant to Republic Act No. 1942.³

Third and last, that La Tondeña failed to prove possession and occupation since June 12, 1945, or earlier.

I find these conclusions fully supported by the facts (as shown by the evidence or its absence), the relevant laws, and the principles and precedents applying these laws.

I **dissent**, however, from the *ponencia*'s ruling that "the agricultural land subject of the application [for registration under Section 48 (b) of the PLA in relation with Section 14 (1) of the PRD] needs only to be classified as [A & D] as of the time of the [filing of the] application," not on June 12, 1945, as required by Section 48 (b).

I find this conclusion (that relies heavily on *Heirs of Mario Malabanan v. Republic of the Philippines*)⁴ contrary to the Constitution, the

¹ "Amending and Codifying the Laws Relative to Registration of Property and For Other Purposes," approved on June 11, 1978.

² "The Public Land Act," approved on November 7, 1936.

³ "An Act to Amend Subsection (b) Of Section Forty-Eight of Commonwealth Act Numbered One Hundred Forty-One, Otherwise Known as the Public Land Act," approved on June 22, 1957.

⁴ 605 Phil. 244 (2009).

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law and their underlying principles and the precedents that correctly and logically interpreted them. In ruling on this particular issue, the *ponencia* effectively read into the law what the Constitution does not, and the legislature did not, provide – an exercise in policy determination and policy formulation process that the Court does not have the authority to undertake.

Thus, I submit this opinion to reflect my continuing objection to the majority's continuing disregard, as reflected in its ruling on this case, of the standards set by the Constitution and the PLA.

As I explained in my concurring and dissenting opinion in *Heirs of Mario Malabanan*⁵ (herein referred to as the *Malabanan Opinion*), **for purposes of confirmation and registration of imperfect title under Section 48 (b) of the PLA (as amended) in relation with Section 14 (1) of the PRD, the public land sought to be registered must have been classified as alienable and disposable as of the cutoff date stated in Section 48 (b) – June 12, 1945, or earlier.**

***Refutation of the present ponencia
within the context of Heirs of Mario Malabanan***

It will be recalled that the majority in *Heirs of Mario Malabanan*⁶ brushed aside the position taken by the Office of the Solicitor General (*OSG*) that for “one to acquire the right to seek registration of an alienable and disposable land of the public domain, it is not enough that the applicant and his/her predecessors-in-interest be in possession under a *bona fide* claim of ownership since 12 June 1945; the alienable and disposable character of the property must have been declared also as of 12 June 1945.”⁷

Relying extensively on *Republic v. Court of Appeals and Naguit*,⁸ the majority in *Heirs of Mario Malabanan* emphatically declared:

x x x **Following the OSGs approach, all lands certified as alienable and disposable after 12 June 1945 cannot be registered either under Section 14(1) of the Property Registration Decree or Section 48(b) of the Public Land Act as amended. The absurdity of such an implication was discussed in Naguit.**

Petitioner suggests an interpretation that the alienable and disposable character of the land should have already been established since June 12, 1945, or earlier. **This is not borne out by the plain meaning of Section 14(1). Since June 12, 1945, as used in the provision, qualifies its antecedent phrase under a bonafide claim of ownership. Generally speaking, qualifying words restrict or modify only the words or**

⁵ Id. at 300-326.

⁶ Id. at 244.

⁷ Id. at 268.

⁸ GR No. 144507, January 17, 2005, 442 SCRA 445.

phrases to which they are immediately associated, and not those distantly or remotely located. *Ad proximum antecedents fiat relation nisi impediatur sententia.*

Besides, we are mindful of the absurdity that would result if we adopt petitioners position. Absent a legislative amendment, the rule would be, adopting the OSGs view, that all lands of the public domain which were not declared alienable or disposable before June 12, 1945 would not be susceptible to original registration, no matter the length of unchallenged possession by the occupant. **Such interpretation renders paragraph (1) of Section 14 virtually inoperative and even precludes the government from giving it effect even as it decides to reclassify public agricultural lands as alienable and disposable.** The unreasonableness of the situation would even be aggravated considering that before June 12, 1945, the Philippines was not yet even considered an independent state.

Accordingly, the Court in *Naguit* explained:

[T]he more reasonable interpretation of Section 14(1) is that it merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed. If the State, at the time the application is made, has not yet deemed it proper to release the property for alienation or disposition, the presumption is that the government is still reserving the right to utilize the property; hence, the need to preserve its ownership in the State irrespective of the length of adverse possession even if in good faith. However, if the property has already been classified as alienable and disposable, as it is in this case, then there is already an intention on the part of the State to abdicate its exclusive prerogative over the property.

The Court declares that the correct interpretation of Section 14(1) is that which was adopted in *Naguit*. The contrary pronouncement in *Herbieto*, as pointed out in *Naguit*, absurdly limits the application of the provision to the point of virtual inutility since it would only cover lands actually declared alienable and disposable prior to 12 June 1945, even if the current possessor is able to establish open, continuous, exclusive and notorious possession under a *bona fide* claim of ownership long before that date.

Moreover, the *Naguit* interpretation allows more possessors under a *bona fide* claim of ownership to avail of judicial confirmation of their imperfect titles than what would be feasible under *Herbieto*. This balancing fact is significant, especially considering our forthcoming discussion on the scope and reach of Section 14(2) of the Property Registration Decree. [All emphases and underscoring supplied.]

As I maintain the same view and legal reasoning, I reiterate below the pertinent portions of my *Malabanan Opinion* that I invoke as basis, *mutatis mutandis*, of my position in the present case.

A. Classification is a constitutionally and statutorily required step without which the land forms part of the mass of the public domain that are completely inalienable

The Constitution, under Section 2, Article XII,⁹ classifies public lands into agricultural, mineral, and timber. Of these public lands, only agricultural lands can be alienated. These classifications are important and should be given full legal recognition and effect for without the requisite classification, there is no basis to determine which lands of the public domain are alienable and which are not.

In other words, **classification is a constitutionally required step**. As I explained in my *Malabanan Opinion*: “... without classification into disposable agricultural land, the land forms part of the mass of the public domain that, not being agricultural, must be mineral or timber land that are completely inalienable and as such cannot be possessed with legal effects.”

This conclusion proceeds from the settled constitutional and jural precept, otherwise known as the regalian doctrine, that all lands of the public domain as well as all natural resources enumerated therein, whether on private or public land, belong to the State. “*To allow effective possession is to do violence to the regalian doctrine; the ownership and control that the doctrine denotes will be less than full if the possession that should be with*

⁹ Section 2 of Article XII reads in full:

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.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

the State as owner, but is elsewhere without any authority, can anyway be recognized."¹⁰

Classification, too, is a fundamental and indispensable requirement from the perspective of statutory law.

In my *Malabanan Opinion*, I pointed out that the PLA, under which grants of public lands can be claimed under its Section 48 (b), operates only on public lands already classified as alienable and disposable. A necessary implication of this legal reality is the other legal reality that prior to such classification, possession under Section 48 (b) cannot be claimed.

The reason for this position is simple: *"In the absence of such classification, the land remains unclassified public land that fully belongs to the State. This is fully supported by Sections 6, 7, 8, 9, and 10 of CA 141. If the land is either mineral or timber and can never be the subject of administration and disposition, it defies legal logic to allow the possession of these unclassified lands to produce legal effect. Thus, the classification of public land as alienable and disposable is inextricably linked to effective possession that can ripen into a claim under Section 48(b) of the PLA."*¹¹ In

¹⁰ 605 Phil. 244, 315 (2009).

¹¹ Id. at 315-316.

Sections 6 to 10 of CA No. 141 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.**

SECTION 7. For the purposes of the administration and disposition of alienable or disposable public lands, the President, upon recommendation by the Secretary of Agriculture and Commerce, shall from time to time declare what lands are open to disposition or concession under this Act.

SECTION 8. Only those lands shall be declared open to disposition or concession which have been officially delimited and classified and, when practicable, surveyed, and which have not been reserved for public or quasi-public uses, nor appropriated by the Government, nor in any manner become private property, nor those on which a private right authorized and recognized by this Act or any other valid law may be claimed, or which, having been reserved or appropriated, have ceased to be so. However, the President may, for reasons of public interest, declare lands of the public domain open to disposition before the same have had their boundaries established or been surveyed, or may, for the same reason, suspend their concession or disposition until they are again declared open to concession or disposition by proclamation duly published or by Act of the National Assembly.

SECTION 9. For the purpose of their administration and disposition, the lands of the public domain alienable or open to disposition shall be classified, according to the use or purposes to which such lands are destined, as follows:

- (a) Agricultural;
- (b) Residential, commercial, industrial, or for similar productive purposes;
- (c) Educational, charitable, or other similar purposes;

short, “[t]here can simply be no imperfect title to be confirmed over lands not yet classified as disposable or alienable.”

B. Under Article 530 of the Civil Code, only things and rights susceptible of being appropriated may be the object of possession.

Consistent with the constitutional and statutory reasons explained above, I also pointed out in my *Malabanan Opinion* that possession is essentially a civil law term that can best be understood in terms of the Civil Code given the absence of any specific definition in the PLA except in terms of time of possession.

In this respect, “Article 530 of the Civil Code provides that ‘[o]nly things and rights which are susceptible of being appropriated may be the object of possession.’ Prior to the declaration of alienability, a land of the public domain cannot be appropriated; hence, any claimed possession of public land [prior to such declaration] cannot have legal effects.”¹²

Accordingly, whether the application for registration is filed before or after the declaration of alienability of the public land is immaterial if, in one as in the other, no effective possession can be recognized prior to the declaration of alienability.

C. Under PD 1073, the intent to count the alienability to June 12, 1945, is seen in the direct, continuous, and seamless linking of the A & D lands of the public domain to June 12, 1945, under the wording of the Decree

As the majority in *Heirs of Mario Malabanan* assumed (based on its statutory construction reasoning and its reading of Section 48 (b) of the PLA), the *ponencia* in this case similarly assumes that all that the law requires is possession from June 12, 1945, and that it suffices if the land has been classified as alienable at the time of application for registration.

(d) Reservations for town sites and for public and quasi-public uses.

The President, upon recommendation by the Secretary of Agriculture and Commerce, shall from time to time make the classifications provided for in this section, and may, at any time and in a similar manner, transfer lands from one class to another.

SECTION 10. The words "alienation," "disposition," or "concession" as used in this Act, shall mean any of the methods authorized by this Act for the acquisition, lease, use, or benefit of the lands of the public domain other than timber or mineral lands.

¹² 605 Phil. 244, 316 (2009).

As I discussed in my *Malabanan Opinion*, the June 12, 1945 cutoff date was painstakingly set by law and should, thus, be given full significance.

On this point, PD 1073 that amended Section 48(b) categorically shows the full import of this cutoff date, as it reads:

SECTION 4. The provisions of Section 48(b) and Section 48(c), Chapter VIII of the Public Land Act are hereby amended in the sense that *these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest, under a bona fide claim of acquisition of ownership, since June 12, 1945.*

Note well that while “PD 1073 did not expressly state what Section 48(b) should provide under the amendment PD 1073 introduced in terms of the exact wording of the amended Section 48(b),¹³ its intent to reckon the alienability of the public land from June 12, 1945, is very clear. The provision “applies *only* to alienable and disposable lands of the public domain that is described in terms of the character of the possession required since June 12, 1945,” *i.e.*, open, continuous, exclusive, and notorious possession and occupation under a *bona fide* claim of acquisition.

In other words, I submit that the clear legislative intent is demonstrated by the *direct, continuous and seamless linking of the alienable and disposable lands of the public domain to June 12, 1945, under the wording of the Decree* – an intent which the Court must respect and uphold.

This position is obviously contrary to the position taken by the majority in *Heirs of Mario Malabanan* as they declared that (and I quote again) “[g]enerally speaking, qualifying words restrict or modify only the words or phrases to which they are immediately associated, and not those distantly or remotely located. *Ad proximum antecedents fiat relation nisi impediatur sententia.*”

In simpler terms, the majority in *Heirs of Mario Malabanan* theorized that the June 12, 1945 cutoff date is far removed from the words “alienable and disposable” by the more proximate words “in open, continuous, exclusive, and notorious possession and occupation” such that the latter is the only condition qualified by the cutoff date. Thus, they hold the position that it is only the time of possession, not the declaration of alienability, which must begin as of June 12, 1945, or earlier.

What the majority in *Heirs of Mario Malabanan* apparently failed to note and mention is that the rule – that the antecedent bears relation to what

¹³ Id. at 317.

follows next – applies only as long as it does not destroy the meaning of the sentence.

For the reasons I explained above, I submit that the interpretation espoused in *Heirs of Mario Malabanan* – that all the law requires is possession from June 12, 1945, regardless of the declaration-of-alienability date as long as the land has been classified as alienable at the time of application for registration – in fact destroys the meaning of PD 1073 as it amends Section 48 (b) of the PLA.

PD 1073 reads in a continuous, uninterrupted flow from the classification of the land – as *alienable and disposable* – to the character of the possession of this land (classified as alienable and disposable) *as open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest – that begins as of June 12, 1945.*

In other words, the *June 12, 1945 cutoff date modifies not only the more immediate words that it follows, i.e., the open, continuous, etc. character of possession that I described above, but also the classification of the land which must be alienable and disposable.*

D. The use of June 12, 1945 as cutoff date for the declaration of alienability will not render the grant of alienable lands out of reach as it may still be obtained by other modes under the PLA, i.e., free patents under Republic Act No. 6940, and homestead settlement and sales under Section 11 of the PLA.

I reiterate, as well, that “*the use of June 12, 1945, as cutoff date for the declaration of alienability will not render the grant of alienable public lands out of reach.*”

Contrary to what the majority ominously portrayed in *Heirs of Mario Malabanan*, the acquisition of ownership and title may, in fact, still be obtained by other modes under the PLA.

Among other laws, RA No. 6940¹⁴ allows the issuance of free patents for lands not in excess of twelve (12) hectares to any natural-born citizen of the Philippines who is not the owner of more than 12 hectares and who, for at least thirty (30) years prior to effectivity of the amendatory act, has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of agricultural public lands subject

¹⁴ “An Act Granting A Period ending on December 31, 2000, for Filing Applications for Free Patent and Judicial Confirmation of Imperfect Title to Alienable and Disposable Lands of the Public Domain under Chapters VII and VIII of the Public Land Act, as amended,” enacted on March 28, 1990.

to disposition.¹⁵ “RA No. 6940 was approved on March 28, 1990; thus, counting 30 years backwards, possession since April 1960 or thereabouts may qualify a possessor to apply for a free patent.” Additionally, the administrative modes under Section 11 of the PLA, particularly, homestead settlement and sales are available for acquisition of ownership and title.


E. The ponencia’s interpretation of the June 12, 1945 reckoning period, as it echoes Heirs of Mario Malabanan, goes beyond the plain wording of Section 48 (b), as amended by PD 1073

By following *Heirs of Mario Malabanan*, the *ponencia* effectively (and similarly) acts beyond the limits of the constitutionally mandated separation of powers as it gives Section 48 (b), as amended by PD 1073, an interpretation beyond its plain wording. As I pointedly declared in my *Malabanan Opinion*, “[e]ven this Court cannot read into the law an intent that is not there even [if the] purpose is to avoid an absurd situation. If we feel that a law already has absurd effects because of the passage of time, our role under the principle of separation of powers is not to give the law an interpretation that is not there in order to avoid the perceived absurdity.”¹⁶

By unquestioningly adopting *Heirs of Mario Malabanan*, the *ponencia* effectively ***dips into the realm of policy determination and policy formulation*** – a role which the Constitution specifically delegated to the Legislature. If only for this reason, the Court should avoid expanding – through *Naguit*, *Heirs of Mario Malabanan*, and the present *ponencia* – the plain meaning of Section 48(b) of the PLA, as amended by PD 1073.

I maintain in this respect that that there is more to *Republic v. Herbieto*¹⁷ than the *Naguit* ruling that the majority in *Heirs of Mario Malabanan* passed off as the established and definitive rule on possession under Section 14 (1) PRD.

In sum, I vote to deny the petition, subject to the above objections on the reckoning period for the classification, as alienable and disposable, of lands of the public domain.


ARTURO D. BRION
Associate Justice

¹⁵ Note also that under RA No. 6940, the Congress recently extended the period for filing applications for judicial confirmation of imperfect and incomplete titles to alienable and disposable lands of the public domain under RA No. 9176 from December 31, 2000 to December 31, 2020.

¹⁶ 605 Phil. 244, 318 (2009).

¹⁷ GR No. 156117, May 26, 2005, 459 SCRA 183.