SECOND DIVISION

G.R. No. 199537 – REPUBLIC OF THE PHILIPPINES, Petitioner v. **ANDREA TAN,** Respondent.

Promulgated:
10 FEB 2016

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CONCURRING OPINION

LEONEN, *J.*:

I concur in the result.

Respectfully, I disagree with the ponencia's statement that "the State owns all lands that are not clearly within private ownership."[1] This statement is an offshoot of the idea that our Constitution embraces the Regalian Doctrine as the most basic principle in our policies involving lands.

The Regalian Doctrine has not been incorporated in our Constitution. Pertinent portion of the Constitution provides:

> SEC. 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[.][2]

Thus, there is no basis for the presumption that all lands belong to the state. The Constitution limits state ownership of lands to "lands of the public domain[.]"[3] Lands that are in private possession in the concept of an owner since time immemorial are considered never to have been public.[4] They were never owned by the state.

In *Cariño v. Insular Government*:[5]

> The [Organic Act of July 1, 1902] made a bill of rights, embodying the safeguards of the Constitution, and, like the Constitution, extends those safeguards to all. It provides that "no law shall be

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1 Ponencia, p. 3.
2 CONST., art. XII, sec. 2.
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5 212 U.S. 449 (1909).

> enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws." § 5. In the light of the declaration that we have quoted from § 12, it is hard to believe that the United States was ready to declare in the next breath that . . . it meant by "property" only that which had become such by ceremonies of which presumably a large part of the inhabitants never had heard, and that it proposed to treat as public land what they, by native custom and by long association,—one of the profoundest factors in human thought,—regarded as their own.
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> . . . 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.[6]

Hence, documents of title issued for such lands are not to be considered as a state grant of ownership. They serve as confirmation of property rights already held by persons. They are mere evidence of ownership.[7] The recognition of private rights over properties that have long been held as private is consistent with our constitutional duty to uphold due process.[8]

The state cannot, on the sole basis of the land's "unclear" private character, always successfully oppose applications for registration of titles, especially when the land involved has long been privately held and historically regarded by private persons as their own.[9]

This case can be resolved without resort to the fiction of the Regalian Doctrine.

Respondent Andrea Tan's application for registration was granted by the land registration court.[10] The Court of Appeals affirmed the land registration court's Decision based on the certification issued by the Community Environment and Natural Resources Office (CENRO) that the land was already classified as alienable and disposable.[11]

By submitting the CENRO's certification, therefore, respondent applicant admitted that prior to her possession, the land was part of the

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6 Id. at 459–460.
7 *See Cariño v. Insular Government*, 212 U.S. 449, 457–460 (1909).
8 CONST., art. III, sec. 1.
9 *See Cariño v. Insular Government*, 212 U.S. 449, 457–460 (1909).
10 Ponencia, p. 2. The registration was granted on April 28, 2004.
11 Id. at 2–3. The Decision was dated May 29, 2009.

public domain. However, she failed to clearly show that the land was classified as alienable and disposable public land.

In several cases, we have clearly ruled that the CENRO's certificate is not sufficient.

ACCORDINGLY, I concur that the Petition should be **GRANTED**.

MARVIC M.V.F. LEONEN
Associate Justice