G.R. No. 184079 (SPOUSES ARMANDO SILVERIO, SR. and REMEDIOS SILVERIO, *Petitioners* v. SPOUSES RICARDO and EVELYN MARCELO, *Respondents*); G.R. NO. 184490 (SPOUSES EVELYN and RICARDO MARCELO, *Petitioners* V. SPOUSES ARMANDO SILVERIO, SR. and REMEDIOS SILVERIO, *Respondents*)

Promulgated:

APR 17 2013

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CONCURRING AND DISSENTING OPINION

SERENO, CJ:

Given the factual circumstances of these cases, I respectfully *dissent* from the finding that there is forum shopping, but *concur* with the ruling that Lot No. 3976 remains a public land.

As culled from the records, Lot No. 3976 is a property located in Philips St. Extension, Multinational Village, Barangay Moonwalk, Paranaque City, having an area of 5,020 square meters.[1] It was first thought to be part of a vast tract of land in Matatdo, Wawa, Paranaque, Rizal (Matatdo property), owned by Pedro Lumbos and tenanted by Graciano Marcelo, Sr.[2] When the entire Matatdo property was bought by a certain Mike Velarde, he developed it into what is now popularly known as the Multinational Village.[3] As part of the development, the Matatdo property was subjected to a resurvey, during which it was found out that Lot No. 3976 did not form part of the property bought by Mike Velarde and hence, is a public, alienable and disposable land.[4] This finding was confirmed by a Certification issued by the Department of Environment and Natural Resources (DENR) that on 3 January 1968, Lot No. 3976 had been classified as "Alienable or Disposable Public Land" per BFD L.C. Map No. 2323.[5] Consequently, Graciano Marcelo, Sr. and his heirs occupied and took actual possession of Lot No. 3976.[6]

On 30 September 1991, Spouses Ricardo and Evelyn Marcelo (Sps. Marcelo), as heirs of Graciano Marcelo, Sr., filed an unnumbered Miscellaneous Sales Application (MSA) with the DENR.[7] Prior to and pending the approval of the MSA, they had already been disposing of Lot

[1] *Rollo* (G.R. No. 184079), p. 95; DENR Decision dated 11 July 2007, p. 1.
[2] Id. at 96; DENR Decision dated 11 July 2007, p. 2.
[3] Id.
[4] Id.
[5] Id. at 189; DENR Certification dated 8 June 2006.
[6] Id. at 96; DENR Decision dated 11 July 2007, p. 2.
[7] Id. at 241; DENR Memorandum dated 13 February 2007, issued by Corazon C. Davis, Regional Executive Director, DENR-National Capital Region, p. 4.

No. 3976 by way of several Sales Contracts,[8] even without having formalized their ownership of the lot. As a result, the number of actual occupants of Lot No. 3976 increased. As of date, Sps. Marcelo occupy an area of approximately 50 square meters, while the remaining portions of Lot No. 3976 are occupied by 111 families.[9]

To legally acquire ownership of the portions of Lot No. 3976 that they were occupying, the occupants agreed among themselves to designate Ricardo Marcelo to file an MSA sometime in 1995. They contributed money and shared in the expenses for the application to prosper.[10] This MSA was opposed by the Heirs of Pedro Lombos,[11] resulting in a full-blown investigation and hearing by the DENR.

On 12 December 1996, the DENR rendered a Decision[12] in the following wise:

> WHEREFORE, premises considered, the Miscellaneous Sales Application/public land applications of Spouses Ricardo Marcelo et. al., should be, as it is hereby, GIVEN DUE COURSE, and the Opposition of Claimants-Oppositor Heirs of Pedro Lombos is DISMISSED for lack of merit.
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> SO ORDERED.

In thus ruling, the DENR declared that Sps. Marcelo, through their predecessors-in-interest, had been "in possession/occupation of the lot in dispute since 1942 or time immemorial"[13] and hence, it was constrained to "grant subject Lot-3976, Cad-299, Paranaque Cadastre, Paranaque, Metro Manila, to Claimants-Applicants Ricardo Marcelo, et. al."[14]

By virtue of this Decision, Sps. Marcelo allegedly claimed exclusive ownership of the entire lot and filed several ejectment cases against the other occupants, including Spouses Remedios and Armando Silverio, Sr. (Sps. Silverio).[15]

In response, a Formal Protest was filed by the *Sitio* Philips Paranaque Neighborhood Association, Inc. against Sps. Marcelo on 11 October 2004.[16]

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[8] Id. at 105; DENR Decision dated 11 July 2007, p. 11. The Sales Contracts refer to those contracted with the following persons, among others: Rowena Lanozo on 11 February 1993; Edgardo Marquez on 14 April 1986; Mssrs. Virgilio Bering and Alejandro Biclar on 29 June 1990; Nazario Robles on 4 May 1992; and Sps. Romeo Sanchez on 14 May 1996.

[9] Id. at 239; DENR Memorandum dated 13 February 2007 issued by Corazon C. Davis, Regional Executive Director, DENR-National Capital Region, p. 2.

[10] Id. at 96-97; DENR Decision dated 11 July 2007, pp. 2-3.

[11] Docketed as *Ricardo Marcelo, et. al., v. Heirs of Pedro Lombos, rep. by Atty. Fabian Lombos* under DENR-NCR Case No. 95-253, Re: Lot 3976, Cad-299, Paranaque, Metro Manila.

[12] *Rollo,* pp. 301-327. DENR Decision penned by OIC-Regional Executive Director Clarence L. Baguilat.

[13] Id. at 327; DENR Decision dated 12 December 1996, p.27.

[14] Id.

[15] Id. at 97; DENR Decision dated 11 July 2007, p. 3.

[16] Id. at 189; DENR Certification dated 8 June 2006.

A Decision[17] thereon was issued by the DENR on 11 July 2007, to wit:

> **WHEREFORE, all the foregoing premises considered,** the Verified Protest filed on 11 October 2004 by Protestants, Sitio Philips Neighborhood Association, Inc., is hereby **GRANTED with modifications.** It is further ordered that:
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> 1. The unnumbered Miscellaneous Sales Application of Protestees Spouses Ricardo and Evelyn Marcelo with respect to the Five Thousand Twenty square meters, should be, as it is hereby annulled and cancelled from the records;
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> 2. Protestees are only entitled to the area they are actually occupying, that is, fifty (50) square meters, as per the findings of the investigation and ocular inspection conducted on the controverted property and thus may file their miscellaneous sales application with respect thereof; and
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> 3. Protestants may now file their application for the purchase of the land that they are occupying under miscellaneous sales. In connection therewith, the Regional Technical Director, Land Management Services, through the Chief, Land Management Division, is directed to evaluate the qualifications of the applicants vis-à-vis the applicable laws, rules and regulations thereon.
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> **SO ORDERED**. (Emphases and underscoring in the original)

In its Decision, the DENR stressed that "what was given due course in the Decision of this Office dated 12 December 1996 were the land applications of the other actual occupants-claimants and the miscellaneous sales application of Spouses Ricardo and Evelyn Marcelo and which was filed on 30 September 1991, or prior to the commencement of the case *Ricardo Marcelo vs. Heirs of Lombos*. However, Sps. Marcelo are only entitled to the portion they were actually occupying, as actual occupation is the basis of the grant, and the same cannot exceed One Thousand (1,000) square meters."[18]

Despite this clarification, Sps. Marcelo still pursued the ejectment cases they had earlier filed against the other occupants of Lot No. 3976. In particular, they filed two separate Complaints for unlawful detainer against the Sps. Silverio: (1) Civil Case No. 2004-271 (G.R. No. 184079) filed on 9 July 2004 before the Metropolitan Trial Court (MeTC), Paranaque City, Branch 78, involving a house which Sps. Silverio built on Lot No. 3976; and (2) Civil Case No. 2004-269 (G.R. No. 184490) filed on 14 August 2004 before the MeTC of Paranaque City, Branch 77, involving another house on Lot No. 3976 which the Sps. Silverio had taken over from their relatives. These were the cases that gave rise to the two conflicting Decisions issued by the Court of Appeals, subjects of this appeal.

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[17] Id. at 95-110; DENR Decision penned by Regional Executive Director Corazon C. Davis.
[18] Id. at 108; DENR Decision dated 11 July 2007, p. 14.

Sps. Marcelo have not violated the rules on forum-shopping.

At the outset, we have defined forum-shopping as the act of a party, against whom an adverse judgment has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or a special civil action for certiorari, or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[19] For forum-shopping to exist, the following elements must be present: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[20]

On their face, the two Complaints filed by Sps. Marcelo seem to have an overwhelming identity of elements, for in both cases, the right to which they hinge their claim is their purported ownership of Lot No. 3976. This fact, however, cannot be used as ammunition to insist on a supposed violation of the rule on forum-shopping. It is clear that the parties entered into two separate contracts, thus signifying that there are also two separate causes of action.

In examining the two causes of action, we must compare the contracts entered into by the parties. In G.R. No. 184079, Sps. Marcelo alleged that Sps. Silverio were allowed to construct a house on Lot No. 3976 sometime in May 1987, on the condition that the latter would vacate the property the moment the former would need it. Meanwhile, in G.R. No. 184490, Sps. Marcelo also alleged that Sps. Silverio were allowed to stay in **another house** built in 1986 by Florante Marcelo and Marilou Silverio (but abandoned sometime in 1998), with the understanding that the house would be dismantled the moment Sps. Marcelo would need the premises.

Needless to say, the ownership of the entire Lot No. 3976 is immaterial. In each case, the contractual relations of the parties are confined only to certain portions of Lot No. 3976.

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[19] *HPS Software & Communication Corp. v. PLDT*, G.R. Nos. 170217 and 170694, 10 December 2012, citing *Metropolitan Bank and Trust Company v. International Exchange Bank*, G.R. Nos. 176008 & 176131, 10 August 2011, 655 SCRA 263, 274. See also *PHILPHARMAWEALTH, Inc. v. Pfizer, Inc. and Pfizer (Phil.), Inc.*, G.R. No. 167715, 17 November 2010, 635 SCRA 140; *Philippine Islands Corporation for Tourism Development, Inc. v. Victorias Milling Co., Inc.*, G.R. No. 167674, 17 June 2008, 554 SCRA 561, 569; *Duvaz Corporation v. Export and Industry Bank*, G.R. No. 163011, 7 June 2007, 523 SCRA 405, 416-417.

[20] *Pentacapital Investment Corp., v. Mahinay*, G.R. No. 171736, 5 July 2010, 623 SCRA 284, citing *Marcopper Mining Corporation v. Solidbank Corporation*, 476 Phil. 415 (2004).

This view is further supported by the fact that the Sps. Marcelo have been disposing of Lot No. 3976 in small portions to different people. To uphold a finding of forum shopping would mean that Sps. Marcelo should file only one complaint against all the other occupants, on the premise that they are the owners of all those lots.

There is merit in the contention that this situation may be akin to that of condominium units, in which the owner-developer is given the right to eject each tenant separately. The rights and duties of both parties need not be reduced to a written contract, as long as the terms remain clear – that Sps. Silverio should vacate the two houses once Sps. Marcelo decided to use them. It therefore follows that there is no *res judicata*, for the finding of ownership in favor of Sps. Marcelo relegates their right to possess only the specific area, subject of each case.

To be sure, the favorable Decision obtained by the Sps. Marcelo in G.R. No. 184079 only made reference to the area on which the house constructed by Sps. Silverio stands. The same is true with G.R. No. 184490, in which the MeTC limited its judgment to where the abandoned house was built.

Lot No. 3976 remains a public land and is without a registered owner.

Nevertheless, I *concur* with the *ponencia* on the finding that the entire Lot No. 3976 remains a public land.

To begin with, the findings of the DENR ought to be given weight, for factual matters relating to lands of the public domain rest within its competency.[21] This principle is in consonance with our long-held rule that findings of fact of an administrative agency are binding and conclusive upon this Court for as long as substantial evidence supports it.[22]

Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land, or alienated to a private person by the State, remain part of the inalienable public domain. The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration, who must prove that the land subject of the application is alienable or disposable.[23] Failure of the applicant to overcome this threshold retains the property within the public realm.

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[21] *Estrella v. Robles, Jr.*, G.R. No. 171029, 22 November 2007, 538 SCRA 60.

[22] *Perez v. Cruz*, 452 Phil. 597 (2003). citing *Bulilan v. Commission on Audit*, 360 Phil. 626, 634 (1998), *Villaflor v. Court of Appeals*, 345 Phil. 524, 562 (1997).

[23] *Republic v. Medida,* G.R. No. 195097, 13 August 2012, 678 SCRA 317, citing *Republic v. Dela Paz*, G.R. No. 171631, 15 November 2010, 634 SCRA 610, 621-622.

As clarified on record, Lot No. 3976 is still a public land, and no land patent has been issued over it as a whole or over any portion thereof. The unnumbered MSA filed by Sps. Marcelo on 30 September 1991 has already been cancelled by the DENR in a Decision dated 11 July 2007 for violating Section 2 of Republic Act No. 730,[24] and for not complying with the requirements of Commonwealth Act No. 141.[25] Hence, the lot has no registered owner.

Coming now to the merits of the case, well-settled is the rule that in an ejectment suit, the only issue is possession *de facto* or physical or material possession, and not possession *de jure.* So that even if the question of ownership is raised in the pleadings, as in this case, the court may pass upon such issue but only to determine the question of possession, especially if the former is inseparably linked with the latter.[26] Article 539 of the Civil Code states:

> Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.

Thus, possessors, whether in the concept of owners or holders, must be respected anent their right to possess. In *Hermitaño v. Clarito*,[27] we have held thus:

> The plaintiff was entitled to have this possession respected until such time as he might have been defeated in the proper action, even if it be true that the deed by which the land was conveyed to him was void. **Even if he had been absolutely without title, with nothing more than the naked possession de facto of the land, under article 446 of the Civil Code he was entitled to have this possession respected.** (Emphasis ours)

It is not denied that Sps. Silverio are currently in actual possession of the area in Lot No. 3976 where the two houses stand, while Sps. Marcelo occupy only 50 square meters thereof. This has been the situation for more than 30 years.[28] Thus, absent any party claiming to have a better right to lawfully eject them, Sps. Silverio ought to remain on the property. Such a consequence is not new and has been passed upon by the Court in *Pajuyo v. Court of Appeals,*[29] in which it ruled:

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[24] *Rollo,* p. 108; DENR Decision dated 11 July 2007. The relevant portion of R.A. 730, Sec. 2 provides: Except in favor of the Government or any of its branches, units, or institutions lands acquired under the provisions of this Act shall not be subject to encumbrance or alienation before the patent is issued and for a term of ten years from the date of the issuance of such patent, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period. x x x x

[25] Id. at 106.

[26] *Dizon v. Court of Appeals*, 332 Phil. 429 (1996). See also *Del Rosario v. Court of Appeals*, 311 Phil. 589; *Mediran v. Villanueva*, 37 Phil. 752; *Somodio v. Court of Appeals*, 235 SCRA 307; *De Luna v. Court of Appeals*, 212 SCRA 276; *Oblea v. Court of Appeals,* 313 Phil. 804 (1995); *Joven v. Court of Appeals,* 212 SCRA 700

[27] 1 Phil. 609, 613 (1902).

[28] *Rollo,* p. 33; Petition for Review on Certiorari (G.R. No. 184079), p. 10.

[29] G.R. No. 146364, 3 June 2004, 430 SCRA 492, 523-524.

> **We are aware of our pronouncement in cases where we declared that "squatters and intruders who clandestinely enter into titled government property cannot, by such act, acquire any legal right to said property."** We made this declaration because the person who had title or who had the right to legal possession over the disputed property was a party in the ejectment suit and that party instituted the case against squatters or usurpers.
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> x x x x
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> Since the party that has title or a better right over the property is not impleaded in this case, we cannot evict on our own the parties. Such a ruling would discourage squatters from seeking the aid of the courts in settling the issue of physical possession. Stripping both the plaintiff and the defendant of possession just because they are squatters would have the same dangerous implications as the application of the principle of pari delicto. Squatters would then rather settle the issue of physical possession among themselves than seek relief from the courts if the plaintiff and defendant in the ejectment case would both stand to lose possession of the disputed property. This would subvert the policy underlying actions for recovery of possession.
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> **Since Pajuyo has in his favor priority in time in holding the property, he is entitled to remain on the property until a person who has title or a better right lawfully ejects him.** Guevarra is certainly not that person. The ruling in this case, however, does not preclude Pajuyo and Guevarra from introducing evidence and presenting arguments before the proper administrative agency to establish any right to which they may be entitled under the law.
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> **In no way should our ruling in this case be interpreted to condone squatting. The ruling on the issue of physical possession does not affect title to the property nor constitute a binding and conclusive adjudication on the merits on the issue of ownership. The owner can still go to court to recover lawfully the property from the person who holds the property without legal title.** Our ruling here does not diminish the power of government agencies, including local governments, to condemn, abate, remove or demolish illegal or unauthorized structures in accordance with existing laws. (Emphases supplied)

The rationale behind this ruling was already explained by the Court: "It is obviously just that the person who has first acquired possession should remain in possession pending this decision; and the parties cannot be permitted meanwhile to engage in a petty warfare over the possession of the property which is the subject of dispute. To permit this would be highly dangerous to individual security and disturbing to social order."[30] In fact, even a wrongful possessor may at times be upheld by the courts, though only temporarily and for the purpose of maintaining public order.[31] The larger and permanent interests of property require that in such rare and exceptional instance, the courts must give preference to and permit actual but wrongful possession.[32]

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[30] *Mediran v. Villanueva,* 37 Phil 752, 757 (1918).
[31] *Manuel v. Court of Appeals,* 276 Phil. 657 (1991).
[32] Id.

Consequently, I agree with the *ponencia* that the disposition in these cases does not preclude any person from asserting title or better right so as to lawfully eject the Sps. Silverio from the property.

WHEREFORE, I vote to **DISMISS** the Complaints for unlawful detainer filed by Spouses Ricardo and Evelyn Marcelo against Spouses Armando Silverio, Sr., and Remedios Silverio for lack of merit.

MARIA LOURDES P. A. SERENO
Chief Justice