G.R. No. 179987 – HEIRS OF MARIO MALABANAN, *petitioners*, *versus* REPUBLIC OF THE PHILIPPINES, *respondent*.

Promulgated:

SEPTEMBER 03, 2013

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SEPARATE OPINION

BRION, *J.*:

Prefatory Statement

This Separate Opinion maintains my view that, ***on the merits***, the petition should be denied, as the petitioners, Heirs of Mario Malabanan, failed to establish that they and their predecessors-in-interest have a right to the property applied for through either ordinary or extraordinary prescription. ***I share this view with the majority***; hence, the Court is ***unanimous in the result*** in resolving the issue presented to us for our resolution.

As lawyers and Court watchers know, "unanimity in the result" carries a technical meaning and implication in the lawyers' world; the term denotes that differing views exist within the Court to support the conclusion they commonly reached. The differences may be in the modality of reaching the unanimous result, or there may just be differences in views on matters discussed within the majority opinion. A little of both exists in arriving at the Court's present result, although the latter type of disagreement predominates.

This Separate Opinion is submitted to state for the record my own (and of those agreeing with me) view on the question of *how Section 48(b) of the Public Land Act and Section 14(1) and (2) of the PRD should operate, particularly in relation with one another, with the Constitution and with the Civil Code provisions on property and prescription.*

A critical point I make relates to what I call the majority's "absurdity argument" that played a major part in our actual deliberations. The argument, to me, points to insufficiencies in our laws that the Court wishes to rectify in its perennial quest "to do justice." I firmly believe though that any insufficiency there may be – particularly one that relates to the continuing wisdom of the law – is for the Legislature, not for this Court, to correct in light of our separate and mutually exclusive roles under the Constitution. The Court may be all-powerful within its own sphere, but the rule of law, specifically, the supremacy of the Constitution, dictates that we

recognize our own limitations and that we desist when a problem already relates to the wisdom of the law before us. All we can do is point out the insufficiency, if any, for possible legislative or executive action. It is largely in this sense that I believe our differing views on the grant and disposition of lands of the public domain should be written and given the widest circulation.

I wrap up this Prefatory Statement with a cautionary note on how the discussions in this Resolution should be read and appreciated. Many of the divergent views expressed, both the majority's and mine, are not completely necessary for the resolution of the direct issues submitted to us; thus, they are, under the given facts of the case and the presented and resolved issues, mostly ***obiter dicta.*** On my part, I nevertheless present them for the reason I have given above, and as helpful aid for the law practitioners and the law students venturing into the complex topic of public land grants, acquisitions, and ownership.

Preliminary Considerations

As a preliminary matter, I submit that:

1. **the hierarchy of applicable laws must be given full application in considering lands of the public domain**. Foremost in the hierarchy is the Philippine Constitution (particularly its Article XII), followed by the applicable special laws — Commonwealth Act No. 141 or the Public Land Act (*PLA*) and Presidential Decree (*PD*) No. 1529 or the Property Registration Decree (*PRD*). The Civil Code and other general laws apply suppletorily and to the extent called for by the primary laws; and

2. the *ponencia's* ruling that the ***classification of public lands*** as alienable and disposable ***does not need to date back to June 12, 1945*** or earlier is ***incorrect*** because:

   a. under the Constitution's Regalian Doctrine,[1] ***classification is a required step*** whose full import should be given full effect and recognition. The legal recognition of *possession prior to classification* runs counter to, and effectively weakens, the Regalian Doctrine;

   b. the terms of the PLA ***only find full application from the time a land of the public domain is classified as agricultural and declared alienable and disposable***. Thus, the possession required under Section 48(b) of this law cannot be recognized prior to the required classification and declaration;

[1] CONSTITUTION, Article XII, Section 2.

c. under the Civil Code, "[o]nly things and rights which are susceptible of being appropriated may be the object of possession."[2] ***Prior to the classification of a public land as alienable and disposable, a land of the public domain cannot be appropriated,*** hence, any claimed possession prior to classification cannot have legal effects;

d. there are ***other modes*** of acquiring alienable and disposable lands of the public domain under the PLA. This legal reality renders the *ponencia's* absurdity argument misplaced; and

e. the alleged absurdity of the law addresses the ***wisdom of the law and is a matter for the Legislature***, not for this Court, to address.

In these lights, I submit that ***all previous contrary rulings*** (particularly, *Republic of the Phils. v. Court of Appeals [Naguit]*[3]) should – *in the proper case* – be abandoned and rejected for being based on legally-flawed premises and as *aberrations in land registration jurisprudence*.

I. THE LAWS AFFECTING PUBLIC LANDS

I likewise submit the following short overview as an aide memoire in understanding our basic public land laws.

A. The Overall Scheme at a Glance

1. *The Philippine Constitution*

The Philippine Constitution is the fountainhead of the laws and rules relating to lands of the public domain in the Philippines. It starts with the postulate that ***all lands of the public domain – classified into agricultural, forests or timber, mineral lands and national parks – are owned by the State***.[4] This principle states the **Regalian Doctrine**, and classifies land ***according to its nature and alienability***.

By way of **exception** to the Regalian Doctrine, the Constitution also expressly states that "[w]ith the exception of agricultural lands [which may be further classified by law according to the uses to which they may be

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2 CIVIL CODE, Article 530.
3 489 Phil. 405 (2005).
4 CONSTITUTION, Article XII, Sections 2 and 3.

devoted],[5] all other natural resources shall not be alienated."[6] ***Alienable lands of the public domain shall be limited to agricultural lands***.[7]

2. *The Public Land Act*

How and to what extent agricultural lands of the public domain may be alienated and may pass into private or non-State hands are determined under the **PLA,** ***which governs the classification, grant, and disposition of alienable and disposable lands of the public domain and, other than the Constitution, is the country's primary substantive law on the matter***.

As a rule, alienation and disposition of lands of the public domain are exercises in determining:

a. ***whether a public land is or has been classified as agricultural*** (in order to take the land out of the mass of lands of the public domain that, by the terms of the Constitution, is inalienable);

b. ***once classified as agricultural, whether it has been declared by the State to be alienable and disposable.*** To reiterate, even agricultural lands, prior to their declaration as alienable, are part of the inalienable lands of the public domain; and

c. ***whether the terms of classification, alienation or disposition have been complied with***. In a **confirmation of imperfect title**, there must be possession since June 12, 1945 or earlier, in an open, continuous, exclusive and notorious manner, by the applicant himself or by his predecessor-in-interest, of public agricultural land that since that time has been declared alienable and disposable, as clearly provided under PD No. 1073.

The Civil Code provides that "*[o]nly things and rights which are susceptible of being appropriated may be the object of possession.*"[8] Prior to the classification of a public land as alienable and disposable, a land of the public domain cannot be appropriated, hence, any claimed possession cannot have legal effects;

d. ***upon compliance with the required period and character of possession of alienable public agricultural land, the possessor acquires ownership,*** thus converting the land to one of private ownership and entitling the applicant-possessor to confirmation of

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5 CONSTITUTION, Article XII, Section 3.
6 CONSTITUTION, Article XII, Section 2.
7 CONSTITUTION, Article XII, Section 3.
8 CIVIL CODE, Article 530.

title under Section 48(b) of the PLA and registration under Section 14(1) of the PRD.

3. *Classification under the Civil Code*

Separately from the classification according to the nature of land under the Constitution, *another system of classification of property* is provided under the **Civil Code.**

The ***Civil Code classifies property*** (as a *general term, compared to land* which is only a species of property, labeled under the Civil Code as immovable property[9]) ***in relation with the person to whom it belongs***.[10]

Property under the Civil Code may belong to the **public dominion** (or property pertaining to the State for *public use, for public service or for the development of the national wealth*)[11] or it may be of **private ownership** (which classification includes **patrimonial property** or property held ***in private ownership*** by the State).[12] Significantly, the Civil Code expressly provides that *"[p]roperty of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.*"[13]

What is otherwise a simple classification from the point of view of the person owning it, assumes a measure of complexity ***when the property is land of the public domain***, as the Constitution, in unequivocal terms, requires classification and declarations on the ***means and manner of granting, alienating, disposing, and acquiring*** lands of the public domain that all originally belong to the State under the Regalian Doctrine.

In a reconciled consideration of the ***Constitution and the Civil Code classifications***, made necessary because they have their respective independent focuses and purposes, certain realities will have to be recognized or deduced:

First. As a ***first principle***, in case of any conflict, the terms of the Constitution prevail. No *ifs* and *buts* can be admitted with respect to this recognition, as the Constitution is supreme over any other law or legal instrument in the land.

Second. A necessary ***corollary*** to the first principle is that all ***substantive considerations*** of land ownership, alienation, or

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9 CIVIL CODE, Article 414.
10 CIVIL CODE, Article 419.
11 CIVIL CODE, Article 420; Arturo Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Volume II – Property (1992 ed.), p. 30.
12 CIVIL CODE, Articles 421 and 422.
13 CIVIL CODE, Article 422.

disposition must always take into account the constitutional requirements.

Third. The classification and the requirements under the Constitution and under the Civil Code may ***overlap*** without any resulting violation of the Constitution.

A piece of land may fall under both classifications (*i.e.*, under the constitutional classification *based on the legal nature of the land and alienability,* and under the civil law classification *based on the ownership of the land*). This can best be appreciated in the discussion below, under the topic ***"The PLA, the Civil Code and Prescription."***[14]

4. *Prescription under the Civil Code*

Prescription is essentially a ***civil law term*** and is a mode of acquiring ownership provided under the Civil Code,[15] but is not mentioned as one of the modes of acquiring ownership of alienable public lands of the public domain under the PLA.[16]

A point of distinction that should be noted is that the PLA, under its Section 48(b), provides for a system that allows ***possession since June 12, 1945 or earlier*** to ripen into ownership. *The PLA, however, does not refer to this mode as acquisitive prescription but* ***as basis for confirmation of title****, and requires a specified period of possession of alienable agricultural land, not the periods for ordinary or extraordinary prescription required under the Civil Code*. Ownership that vests ***under Section 48(b) of the PLA*** can be registered under ***Section 14(1) of the PRD.***

The PRD, under its Section 14(2), recognizes that registration of title can take place as soon as ownership over private land has vested due to prescription – "[t]hose who have acquired ownership of private lands by prescription under the provisions of existing laws." Thus, prescription was introduced into the PRD land registration scheme but not into the special law governing the grant and alienation of lands of the public domain, *i.e.*, the PLA.

An important provision that should not be missed in considering prescription is **Article 1108** of the Civil Code, which states that ***prescription does not run against the State and its subdivisions***. **Article 1113** of the Civil Code is a companion provision stating that "*[a]ll things which are within the commerce of men are susceptible of prescription, unless otherwise provided.* ***Property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription***."

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14 See: discussion below at p. 17 hereof.

15 See CIVIL CODE, Articles 712 and 1106.

16 PLA, Section 11.

The above-cited rules express civil law concepts, but their results are effectively replicated in the scheme governing lands of the public domain since these lands, by constitutional fiat, cannot be alienated and are thus outside the commerce of man, except under the rigid terms of the Constitution and the PLA. For example, confirmation of imperfect title – the possession-based rule under the PLA – can only take place with respect to agricultural lands already declared alienable and possessed for the required period (since June 12, 1945 or earlier).

5. ***The PRD***

The PRD was issued in 1978 to update the ***Land Registration Act*** (Act No. 496) and ***relates solely to the registration of property***. The law does not provide the means for acquiring title to land; it refers solely to the means or procedure of registering and rendering indefeasible title already acquired.

The PRD mainly governs the registration of lands and places them under the Torrens System. ***It does not, by itself, create title nor vest one. It simply confirms a title already created and already vested, rendering it forever indeafeasible***.[17]

In a side by side comparison, the ***PLA is the substantive law*** that classifies and provides for the disposition of alienable lands of the public domain. On the other hand, the ***PRD refers to the manner of bringing registerable title to lands, among them, alienable public lands, within the coverage of the Torrens system***; in terms of substantive content, the PLA must prevail.[18] ***On this consideration, only land of the public domain that has passed into private ownership under the terms of the PLA can be registered under the PRD.***

II. THE CASE AND THE ANTECEDENT FACTS

The Case.

Before the Court are the ***motions*** separately filed by the petitioners and by the respondent Republic of the Philippines, both of them seeking

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[17] Oswaldo D. Agcaoili, *Property Registration Decree and Related Laws* (2006 ed.), pp. 14-15.

[18] Substantive law is that which creates, defines and regulates rights, or which regulates the rights and duties which give rise to a cause of action, that part of the law which courts are established to administer, as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtains redress for their invasion (*Primicias v. Ocampo, etc., et al.*, 93 Phil. 446). It is the nature and the purpose of the law which determine whether it is substantive or procedural, and not its place in the statute, or its inclusion in a code (Florenz D. Regalado, *Remedial Law Compendium*, Volume I [Ninth Revised Edition], p. 19). Note that Section 51of the PLA refers to the Land Registration Act (the predecessor law of the PRD) on how the Torrens title may be obtained when an alienable land of public domain is acquired through the substantive right recognized under Section 48 of the PLA.

reconsideration of the Court's **Decision dated April 29, 2009** which denied the petitioners' petition for review on *certiorari* under Rule 45 of the Rules of Court.

The Underlying Facts

The present case traces its roots to the land registration case instituted by the petitioners' predecessor, Mario Malabanan (*Malabanan*). On February 20, 1998, Malabanan filed an application for the registration of a 71,324-square meter land, located in Barangay Tibig, Silang, Cavite, with the Regional Trial Court (*RTC*) of Cavite – Tagaytay City, Branch 18.[19] Malabanan alleged that he purchased the property from Eduardo Velazco. The property was originally part of a 22-hectare land owned by Lino Velazco (*Velazco*), who was succeeded by his four sons, among them, Eduardo Velazco.[20]

Apart from his ***purchase of the property***, Malabanan anchored his registration petition on his and his predecessors-in-interest's ***open, notorious, continuous, adverse and peaceful possession of the land for more than 30 years.*** Malabanan claimed that the land is an alienable and disposable land of the public domain, presenting as proof the Certification dated June 11, 2001 of the Community Environment and Natural Resources Office of the Department of Environment and Natural Resources. The Certification stated that the land was "verified to be within the Alienable or Disposable land per Land Classification Map No. 3013 established under Project No. 20-A and **approved** as such under FAO 4-1656 **on March 15, 1982**."[21]

The Issue Before the Court.

In their motion for reconsideration, the petitioners submit that the mere classification of the land as alienable or disposable should be deemed sufficient to convert it into patrimonial property of the State. Relying on the rulings in *Spouses de Ocampo v. Arlos*,[22] *Menguito v. Republic*,[23] and *Republic v. T.A.N. Properties, Inc.*,[24] they argue that the reclassification of the land as alienable or disposable opened it to acquisitive prescription under the Civil Code; that Malabanan had purchased the property from Velazco, believing in good faith that Velazco and his predecessors-in-interest had been the real owners of the land, with the right to validly transmit title and ownership thereof; that consequently, the 10-year period prescribed by Article 1134 of the Civil Code, in relation with Section 14(2) of the PRD,

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19 See *Heirs of Mario Malabanan v. Republic*, G.R. No. 179987, April 29, 2009, 587 SCRA 172, 181.

20 Ibid.

21 Id. at 182; emphases and underscores ours.

22 397 Phil. 799 (2000).

23 401 Phil. 274 (2000).

24 G.R. No. 154953, June 26, 2008, 555 SCRA 477.

applied in their favor; and that when Malabanan filed his application for registration on February 20, 1998, he had already been in possession of the land for almost 16 years, reckoned from 1982, the time when the land was declared inalienable and disposable by the State.

The respondent seeks the partial reconsideration in order to seek clarification with reference to the application of the rulings in *Naguit* and *Republic of the Phils. v. Herbieto*.[25] It reiterates its view that an applicant is entitled to registration only when the land subject of the application had been declared alienable and disposable since June 12, 1945.

As presented in the petition and the subsequent motion for reconsideration, ***the direct issue before the Court is whether there had been acquisition of title, based on ordinary or extraordinary prescription, over a land of the public domain declared alienable as of March 15, 1982***. The issue was ***not*** about *confirmation of an imperfect title* where possession started on or before June 12, 1945 since possession had not been proven to have dated back to or before that date.

The Antecedents and the Ruling under Review

On December 3, 2002, the RTC rendered judgment favoring Malabanan, approving his application for registration of the land "under the operation of Act 141, Act 496 and/or PD 1529."[26]

The respondent, represented by the Office of the Solicitor General (*OSG*), appealed the RTC decision with the Court of Appeals (*CA*). The OSG contended that Malabanan failed to prove: (1) that the property belonged to the alienable and disposable land of the public domain, and (2) that he had not been in possession of the property in the manner and for the length of time required by law for confirmation of imperfect title. During the pendency of the appeal before the CA, Malabanan died and was substituted by the petitioners.

In its decision dated February 23, 2007, the CA reversed the RTC decision and dismissed Malabanan's application for registration. Applying the Court's ruling in *Herbieto,* the CA held that "under Section 14(1) of the Property Registration Decree any period of possession prior to the classification of the lots as alienable and disposable was inconsequential and should be excluded from the computation of the period of possession."[27] Since the land was classified as alienable and disposable only on March 15, 1982, any possession prior to this date cannot be considered.

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25 498 Phil. 227 (2005).

26 Id. at 5.

27 See *Heirs of Mario Malabanan v. Republic, supra* note 19, at 183.

The petitioners assailed the CA decision before this Court through a petition for review on *certiorari.* On April 29, 2009, the Court denied the petition. The Court's majority (through Justice Dante Tinga) summarized its ruling as follows:

> (1) In connection with Section 14(1) of the PRD, Section 48(b) of the Public Land Act recognizes and confirms that "those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of acquisition of ownership, since June 12, 1945" have acquired ownership of, and registrable title to, such lands based on the length and quality of their possession.
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> (a) Since **Section 48(b) merely requires possession since 12 June 1945 and does not require that the lands should have been alienable and disposable during the entire period of possession**, the possessor is entitled to secure judicial confirmation of his title thereto as soon as it is declared alienable and disposable, subject to the timeframe imposed by Section 47 of the Public Land Act.
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> (b) The right to register granted under Section 48(b) of the Public Land Act is further confirmed by Section 14(1) of the Property Registration Decree.
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> (2) In complying with Section 14(2) of the Property Registration Decree, consider that under the Civil Code, prescription is recognized as a mode of acquiring ownership of patrimonial property. However, public domain lands become only patrimonial property not only with a declaration that these are alienable or disposable. There must also be an express government manifestation that the property is already patrimonial or no longer retained for public service or the development of national wealth, under Article 422 of the Civil Code. And **only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run.**
>
> (a) Patrimonial property is private property of the government. The person acquires ownership of patrimonial property by prescription under the Civil Code is entitled to secure registration thereof under Section 14(2) of the Property Registration Decree.
>
> (b) There are two kinds of prescription by which patrimonial property may be acquired, one ordinary and other extraordinary. Under ordinary acquisitive prescription, a person acquires ownership of a patrimonial property through possession for at least ten (10) years, in good faith and with just title. Under extraordinary acquisitive prescription, a person's uninterrupted adverse possession of patrimonial property for at least thirty (30) years, regardless

of good faith or just title, ripens into ownership.[28]

Based on this ruling, the majority denied the petition, but established the above rules which embody ***principles contrary to Section 48(b) of the PLA and which are not fully in accord with the concept of prescription under Section 14(2) of the PRD***, in relation with the Civil Code provisions on property and prescription.

In its ruling on the present motions for reconsideration, the *ponencia* essentially affirms the above ruling, rendering this Separate Opinion and its conclusions necessary.

III. DISCUSSION OF THE PRESENTED ISSUES

A. Section 48(b) of the PLA: Confirmation of Imperfect Title

Section 48(b) of the PLA is the core provision on the **confirmation of imperfect title** and must be read with its related provision in order to fully be appreciated.

Section 7 of the PLA delegates to the President the authority to administer and dispose of alienable public lands. **Section 8** sets out the public lands open to disposition or concession, and the requirement that they should be officially delimited and classified and, when practicable, surveyed. **Section 11**, a very significant provision, states that —

> Section 11. Public lands suitable for agricultural purposes can be disposed of only as follows, and not otherwise:
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> (1) For homestead settlement
> (2) By sale
> (3) By lease
> (4) ***By confirmation of imperfect or incomplete title:***
> (a) ***By judicial legalization***
> (b) By administrative legalization (free patent). [emphases ours]

Finally, **Section 48** of the PLA, on ***confirmation of imperfect title***, embodies a grant of title to the qualified occupant or possessor of an alienable public land, under the following terms:

> Section 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where

[28] Id. at 210-211; italics supplied, emphases ours, citation omitted.

> the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:
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> (a) Those who prior to the transfer of sovereignty from Spain to the x x x United States have applied for the purchase, composition or other form of grant of lands of the public domain under the laws and royal decrees then in force and have instituted and prosecuted the proceedings in connection therewith, but have[,] with or without default upon their part, or for any other cause, not received title therefor, if such applicants or grantees and their heirs have occupied and cultivated said lands continuously since the filing of their applications.
>
> (b) ***Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, except as against the Government, since July twenty-sixth, eighteen hundred and ninety-four, except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter***.
>
> (c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of the public domain suitable to agriculture, whether disposable or not, under a bona fide claim of ownership for at least 30 years shall be entitled to the rights granted in sub-section (b) hereof. [emphasis ours]

Subsection (a) has now been deleted, while subsection (b) has been amended by PD No. 1073 as follows:

> 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.

Based on these provisions and a narrow reading of the "since June 12, 1945" timeline, the *ponencia* now rules that *the declaration that the land is agricultural and alienable can be made at the time of application for registration and need not be from June 12, 1945 or earlier.*[29] This conclusion follows the ruling in *Naguit* (likewise penned by Justice Tinga) that additionally argued that reckoning the declarations from June 12, 1945 leads to absurdity.

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[29] *Ponencia*, pp. 11-12.

For the reasons outlined below, I cannot agree with these positions and with the *Naguit* ruling on which it is based:

First. The constitutional and statutory reasons. The Constitution classifies public lands into agricultural, mineral, timber lands and national parks. Of these, only agricultural lands can be alienated.[30] Without the requisite classification, there can be no basis to determine which lands of the public domain are alienable and which are not. Hence, ***classification is a constitutionally-required step whose importance should be given full legal recognition and effect.***

Otherwise stated, ***without classification*** into disposable agricultural land, the land ***continues to form part of the mass of the public domain*** that, not being agricultural, must be mineral, timber land or national parks that are completely inalienable and, as such, cannot be possessed with legal effects. To recognize possession prior to any classification is to do violence to the Regalian Doctrine; the ***ownership and control*** that the Regalian Doctrine embodies will be ***less than full*** if the possession – that should be with the State as owner, but is also elsewhere without any solid legal basis – can anyway be recognized.

Note in this regard that the terms of the PLA do not find full application until a classification into alienable and disposable agricultural land of the public domain is made. In this situation, possession cannot be claimed under Section 48(b) of the PLA.

Likewise, no imperfect title can be confirmed over lands not yet classified as disposable or alienable because, 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 the PLA.[31] If the land is either mineral, timber or national parks that cannot be

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[30] CONSTITUTION, Article XII, Section 3.

[31] 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.

alienated, it defies legal logic to recognize that possession of these unclassified lands can produce legal effects.

Parenthetically, PD No. 705 or the Revised Forestry Code states that "**Those [lands of public domain] still to be classified under the present system shall continue to remain as part of the public forest.**"[32] It further declares that *public forest* covers "**the mass of lands of the public domain which has not been the subject of the present system of classification** for the determination of which lands are needed for forest purposes and which are not."[33]

Thus, PD No. 705 confirms that all lands of the public domain that remain unclassified are considered as forest land.[34] As forest land, these lands of the public domain cannot be alienated until they have been reclassified as agricultural lands. For purposes of the present case, these terms confirm the position that re/classification is essential at the time possession is acquired under Section 48(b) of the PLA.

From these perspectives, the legal linkage between (1) the classification of public land as alienable and disposable and (2) effective possession that can ripen into a claim under Section 48(b) of the PLA can readily be appreciated.

The Leonen Opinion

Incidentally, Justice Marvic F. Leonen opines in his Concurring and Dissenting Opinion that the Regalian Doctrine was not incorporated in our Constitution and that "there could be land, considered as property, where ownership has vested as a result of either possession or prescription but still, as yet undocumented."[35]

I will respond to this observation that, although relating to the nature of the land applied for (land of the public domain) and to the Regalian

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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
(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.

[32] PD No. 705, Section 13.

[33] PD No. 705, Section 3(a).

[34] *Secretary of the Department of Environment and Natural Resources v. Yap*, G.R. Nos. 167707 and 173775, October 8, 2008, 568 SCRA 164, 200.

[35] Concurring and Dissenting Opinion of Justice Marvic Mario Victor F. Leonen, p. 2.

Doctrine, still raises aspects of these matters that are not exactly material to the direct issues presented in the present case. I respond to correct for the record and at the earliest opportunity what I consider to be an erroneous view.

The Regalian Doctrine was incorporated in all the Constitutions of the Philippines (1935, 1973 and 1987) and the statutes governing private individuals' land acquisition and registration. In his Separate Opinion in *Cruz v. Sec. of Environment and Natural Resources,*[36] former Chief Justice Reynato S. Puno made a brief yet informative historical discussion on how the Regalian Doctrine was incorporated in our legal system, especially in all our past and present organic laws. His historical disquisition was quoted in *La Bugal-B'laan Tribal Association, Inc. v. Sec. Ramos*[37] and the consolidated cases of *The Secretary of the DENR et al. v. Yap and Sacay et al. v. The Secretary of the DENR,*[38] which were also quoted in Justice Lucas P. Bersamin's Separate Opinion in his very brief discussion on how the doctrine was carried over from our Spanish and American colonization up until our present legal system.

Insofar as our organic laws are concerned, *La Bugal-B'laan* confirms that:

> one of the fixed and dominating objectives of the 1935 Constitutional Convention [was the nationalization and conservation of the natural resources of the country.]
>
> > There was an overwhelming sentiment in the Convention in favor of the principle of state ownership of natural resources and the adoption of the Regalian doctrine. State ownership of natural resources was seen as a necessary starting point to secure recognition of the state's power to control their disposition, exploitation, development, or utilization. The delegates [to] the Constitutional Convention very well knew that the concept of State ownership of land and natural resources was introduced by the Spaniards, however, they were not certain whether it was continued and applied by the Americans. To remove all doubts, the Convention approved the provision in the Constitution affirming the Regalian doctrine.
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> > x x x x
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> On January 17, 1973, then President Ferdinand E. Marcos proclaimed the ratification of a new Constitution. Article XIV on the National Economy and Patrimony contained provisions similar to the 1935

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36 400 Phil. 904 (2000).
37 465 Phil. 860 (2004).
38 *Supra* note 34.

> Constitution with regard to Filipino participation in the nation's natural resources. Section, 8, Article XIV thereof[.]
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> x x x x
>
> The 1987 Constitution retained the Regalian doctrine. The first sentence of Section 2, Article XII states: "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."[39]

In these lights, I believe that, at this point in our legal history, there can be no question that the Regalian Doctrine remains in the pure form interpreted by this Court; it has resiliently endured throughout our colonial history, was continually confirmed in all our organic laws, and is presently embodied in Section 2, Article XII of our present Constitution. Short of a constitutional amendment duly ratified by the people, the views and conclusions of this Court on the Regalian Doctrine should not and cannot be changed.

Second. The Civil Code reason. Possession is essentially a civil law term that can best be understood in terms of the Civil Code in the absence of any specific definition in the PLA, other than in terms of time of possession.[40]

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 cannot have legal effects. In fact, whether an application for registration is filed before or after the declaration of alienability becomes immaterial if, in one as in the other, no effective possession can be recognized prior to and within the proper period for the declaration of alienability.

To express this position in the form of a direct question: ***How can possession before the declaration of alienability be effective when the land then belonged to the State against whom prescription does not run?***

Third. Statutory construction and the cut-off date — June 12, 1945. The *ponencia* concludes – based on its statutory construction reasoning and reading of Section 48(b) of the PLA – that the June 12, 1945 cut-off is only required for purposes of possession and that it suffices if the land has been classified as alienable agricultural land at the time of application for registration.[41]

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39 *Supra* note 37, at 903-919; citations omitted.

40 CIVIL CODE, Article 18.

41 *Ponencia*, p. 11.

This cut-off date was painstakingly set by law and its full import appears from PD No. 1073 that amended Section 48(b) of the PLA. While the resulting Section 48(b) of the PLA did not expressly state what PD No. 1073 introduced in terms of exact wording, PD No. 1073 itself, as formulated, shows the intent to count the alienability from June 12, 1945. To quote the exact terms of PD No. 1073:

> 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**. [emphases and underscores ours]

In reading this provision, it has been claimed that June 12, 1945 refers only to the required possession and not to the declaration of alienability of the land applied for. The terms of PD No. 1073, however, are plain and clear even from the grammatical perspective alone. The term "since June 12, 1945" is unmistakably separated by a comma from the conditions of both alienability and possession, thus, plainly showing that it refers to both alienability and possession. This construction – showing 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 – is clear and should be respected, particularly if read with the substantive provisions on ownership of lands of the public domain and the limitations that the law imposes on possession.

***Fourth*. Other modes of acquisition of lands under the PLA**. The cited *Naguit's* absurdity argument that the *ponencia* effectively adopted is more apparent than real, since the use of June 12, 1945 as cut-off date for the declaration of alienability will not render the grant of alienable public lands out of reach.

The acquisition of ownership and title may still be obtained by other modes under the PLA. Among other laws, **Republic Act (*RA*) No. 6940** allowed the use of free patents.[42] It was approved on March 28, 1990; hence, counting 30 years backwards, possession since April 1960 or thereabouts qualified a possessor to apply for a free patent.[43] Additionally, the other

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[42] Section 1. Paragraph 1, Section 44, Chapter VII of Commonwealth Act No. 141, as amended, is hereby amended to read as follows:

"Sec. 44. Any natural-born citizen of the Philippines who is not the owner of more than twelve (12) hectares and who, **for at least thirty (30) years prior to the effectivity of this 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 to disposition**, who shall have paid the real estate tax thereon while the same has not been occupied by any person shall be entitled, under the provisions of this Chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twelve (12) hectares."

[43] Under RA No. 9176, applications for free patents may be made up to December 31, 2020.

administrative modes provided under Section 11 of the PLA are still open, particularly, homestead settlement, sales and lease.

Incidentally, the *ponencia* mentions RA No. 10023, entitled "*An Act Authorizing the Issuance of* ***Free Patents to Residential Lands,"*** in its discussions.[44] This statute, however, has no relevance to the present case because its terms apply to alienable and disposable lands of the public domain (necessarily agricultural lands under the Constitution) that have been reclassified as **residential** under Section 9(b) of the PLA.[45]

Fifth. Addressing the wisdom — or the absurdity — of the law. This Court acts beyond the limits of the constitutionally-mandated separation of powers in giving Section 48(b) of the PLA, as amended by PD No. 1073, an interpretation beyond its plain wording. ***Even this Court cannot read into the law an intent that is not there even if the purpose is to avoid an absurd situation***.

If the Court believes that a law already has absurd effects because of the passage of time, its 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. If the Court does, it thereby intrudes into the realm of policy — a role delegated by the Constitution to the Legislature. If only for this reason, the Court should avoid expanding — through the present *ponencia* and its cited cases — the plain meaning of Section 48(b) of the PLA, as amended by PD No. 1073.

In the United States where the governing constitutional rule is likewise the separation of powers between the Legislative and the Judiciary, Justice Antonin Scalia (in the book *Reading Law* co-authored with Bryan A. Garner) made the pithy observation that:

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[44] *Ponencia*, p. 10.

[45] 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

(d) Reservations for town sites and for public and quasi-public uses. [emphasis ours]

Note that the classification and concession of residential lands are governed by Title III of the PLA; Title II refers to agricultural lands.

The *ponente* mentioned RA No. 10023 in support of his opinion on the government's policy of adjudicating and quieting titles to unregistered lands (p. 13). He claims that the grant of public lands should be liberalized to support this policy (citing the Whereas clause of PD No. 1073, which states: "it has always been the policy of the State to hasten settlement, adjudication and quieting of title of titles to unregistered lands); thus, his interpretation that classification of the land as agricultural may be made only at the time of registration and not when possession commenced.

To be entitled to a grant under RA No. 10023, the law states:

> "…the applicant thereof has, either by himself or through his predecessor-in-interest, actually resided on and continuously possessed and occupied, under a bona fide claim of acquisition of ownership, the [residential] land applied for at least ten (10) years and has complied with the requirements prescribed in Section 1 hereof…"

Notably, this requirements are not new as they are similar (except for the period) to those required under Section 48(b) of the PLA on judicial confirmation of imperfect title.

> To the extent that people give this view any credence, the notion that judges may (even should) improvise on constitutional and statutory text enfeebles the democratic polity. As Justice John Marshall Harlan warned in the 1960s, an invitation to judicial lawmaking results inevitably in "a lessening, on the one hand, of judicial independence and, on the other, of legislative responsibility, thus polluting the bloodstream of our system of government." Why these alarming outcomes? First, when judges fashion law rather than fairly derive it from governing texts, they subject themselves to intensified political pressures – in the appointment process, in their retention, and in the arguments made to them. Second, every time a court constitutionalizes a new sliver of law – as by finding a "new constitutional right" to do this, that, or the other – that sliver becomes thenceforth untouchable by the political branches. In the American system, a legislature has no power to abridge a right that has been authoritatively held to be part of the Constitution – even if that newfound right does not appear in the text. Over the past 50 years especially, we have seen the judiciary incrementally take control of larger and larger swaths of territory that ought to be settled legislatively.
>
> It used to be said that judges do not "make" law – they simply apply it. In the 20th century, the legal realists convinced everyone that judges do indeed make law. To the extent that this was true, it was knowledge that the wise already possessed and the foolish could not be trusted with. It was true, that is, that judges did not really "find" the common law but invented it over time. Yet this notion has been stretched into a belief that judges "make" law through judicial interpretation of democratically enacted statutes. Consider the following statement by John P. Dawson, intended to apply to statutory law:
>
> > It seems to us inescapable that judges should have a part in creating law – creating it as they apply it. In deciding the multifarious disputes that are brought before them, we believe that judges in any legal system invariably adapt legal doctrines to new situations and thus give them new content.
>
> Now it is true that in a system such as ours, in which judicial decisions have a stare decisis effect, a court's application of a statute to a "new situation" can be said to establish *the law applicable to that situation* – that is, to pronounce definitively whether and how the statute applies to that situation. But establishing this retail application of the statute is probably not what Dawson meant by "creating law," "adapt[ing] legal doctrines," and "giv[ing] them new content." Yet beyond that retail application, good judges dealing with statutes do *not* make law. They do not "give new content" to the statute, but merely apply the content that has been there all along, awaiting application to myriad factual scenarios. To say that they "make law" without this necessary qualification is to invite the taffy-like stretching of words – or the ignoring of words altogether. [46]

In the Philippines, a civil law country where the Constitution is very clear on the separation of powers and the assignment of constitutional duties,

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[46] At pp. 4-6; citations omitted.

I believe that this Court should be very careful in delineating the line between the ***constitutionally-allowed*** interpretation and the ***prohibited*** judicial legislation, given the powers that the 1987 Constitution has entrusted to this Court. As a Court, we are given more powers than the U.S. Supreme Court; under Section 1, Article VIII of the 1987 Constitution, we are supposed to act, ***as a matter of duty,*** on any grave abuse of discretion that occurs anywhere in government. While broad, this power should nevertheless be exercised with due respect for the separation of powers doctrine that underlies our Constitution.

B. Registration under Section 14(1) and (2) of the PRD

Complementing the substance that the PLA provides are the provisions of the PRD that set out the registration of the title that has accrued under the PLA. **Section 14 of the PRD** provides:

> SEC. 14. Who May Apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) ***Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier***.
>
> (2) ***Those who have acquired ownership of private lands by prescription under the provisions of existing laws***.
>
> (3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.
>
> (4) Those who have acquired ownership of land in any other manner provided for by law. [emphasis and italics ours]

As mentioned earlier, the PLA is the substantive law on the grant and disposition of alienable lands of the public domain. The PRD, on the other hand, sets out the manner of bringing registrable lands, among them alienable public lands, within the coverage of the Torrens system. In this situation, in terms of substantive content, the PLA should prevail.

1. **Section 14(1) of the PRD** is practically a reiteration of Section 48(b) of the PLA, with the difference that they govern two different aspects of confirmation of imperfect title relating to alienable lands of the public domain. The PLA has its own substantive focus, while Section 14(1) of the PRD, bearing on the same matter, defines what title may be registered. For

this reason, the discussions of Section 48(b) apply with equal force, *mutatis mutandis*, to Section 14(1) of the PRD.

2. **Section 14(2) of the PRD is another matter. By its express terms, the prescription that it speaks of applies only to private lands**. Thus, on plain reading, Section 14(2) should not apply to alienable and disposable lands of the public domain that Section 14(1) covers. This is the significant difference between Sections 14(1) and 14(2). The former – Section 14(1) – is relevant when the ownership of an alienable and disposable land of the public domain vests in the occupant or possessor under the terms of Section 48(b) of the PLA, even without the registration of a confirmed title since the land *ipso jure* becomes a private land. Section 14(2), on the other hand, applies to situations when ownership of private lands vests on the basis of prescription.

The prescription that Section 14(2) of the PRD speaks of finds no application to alienable lands of the public domain – specifically, to Section 48(b) of the PLA since this provision, as revised by PD No. 1073 in January 1977, ***simply requires possession and occupation since June 12, 1945 or earlier, regardless of the period the property was occupied*** (although when PD No. 1073 was enacted in 1977, the property would have been possessed for at least 32 years by the claimant if his possession commenced exactly on June 12, 1945, or longer if possession took place earlier).

Parenthetically, my original April 29, 2009 Opinion stated that the cut-off date of June 12, 1945 appeared to be devoid of legal significance as far as the PLA was concerned. This statement notwithstanding, it should be appreciated that ***prior to PD No. 1073***, Section 48(b) of the PLA ***required a 30-year period of possession***. This 30-year period was a requirement imposed under **RA No. 1942 in June 1957**, under the following provision:

> (b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, **for at least thirty years** immediately preceding the filing of the application for confirmation of title, except when prevented by war or force majeure[.]

When PD No. 1073 was enacted in 1977, it was recognized that a claimant who had possessed the property for at least 30 years (in compliance with RA No. 1942) might not be entitled to confirmation of title under PD No. 1073 because his possession commenced only after June 12, 1945. This possibility constituted a violation of his vested rights that should be avoided. To resolve this dilemma, the Court, in *Abejaron v. Nabasa*,[47] opined that where an application has satisfied the requirements of Section 48(b) of the PLA, as amended by RA No. 1942 (prior to the effectivity of PD No. 1073),

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[47] 411 Phil. 552, 569-570 (2001).

the applicant is entitled to perfect his or her title even if possession and occupation do not date back to June 12, 1945.

What this leads up to is that possession of land "for the required statutory period" becomes significant only when the claim of title is based on the amendment introduced by RA No. 1942. **The 30-year period introduced by RA No. 1942 "did not refer or call into application the Civil Code provisions on prescription."**[48] In fact, in *The Director of Lands v. IAC*[49] and the opinion of Justice Claudio Teehankee in *Manila Electric Co. v. Judge Castro-Bartolome, etc., et al.*,[50] cited by the *ponencia*,[51] both pertained to the RA No. 1942 amendment; it was in this sense that both rulings stated that mere lapse or completion of the required period converts alienable land to private property.

In sum, if the claimant is asserting his vested right under the RA No. 1942 amendment, then it would be correct to declare that the lapse of the required statutory period converts alienable land to private property *ipso jure*. Otherwise, if the claimant is asserting a right under the PD No. 1073 amendment, then he needs to prove possession of alienable public land as of June 12, 1945 or earlier. Although a claimant may have possessed the property for 30 years or more, if his possession commenced ***after January 24, 1947*** (the adjusted date based on *Abejaron*), the property would not be converted into private property by the mere lapse of time.

3. As a last point, the *ponencia* effectively claims[52] that the classification of property as agricultural land is only *necessary at the time of application for registration of title*.

This is completely erroneous. The act of registration merely confirms that title already exists in favor of the applicant. To require classification of the property only on application for registration point would imply that during the process of acquisition of title (specifically, during the period of possession prior to the application for registration), the property might not have been alienable for being unclassified land (or a forest land under PD No. 705) of the public domain. This claim totally contravenes the constitutional rule that only agricultural lands of the public domain may be alienated.

To translate all these arguments to the facts of the present case, the land applied for was not classified as alienable on or before June 12, 1945 and was indisputably only classified as alienable only on March 15, 1982. Under these facts, the *ponencia* still asserts that following the *Naguit* ruling, possession of the non-classified land during the material period would still

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48 *Heirs of Mario Malabanan v. Republic*, *supra* note 19, at 201.
49 230 Phil. 590 (1986).
50 200 Phil. 284 (1982).
51 *Ponencia*, p. 12.
52 Id. at 10.

comply with Section 48(b) of the PLA, provided that there is already a classification at the time of application for registration.

This claim involves ***essential contradiction in terms*** as only a land that can already be registered under Section 48(b) of the PLA can be registered under Section 14(1) of the PRD. Additionally, the *ponencia*, in effect, confirmed that possession prior to declaration of alienability can ripen into private ownership of a land that, under the Constitution, the PLA, and even the Civil Code, is not legally allowed.

The *ponencia's* position all the more becomes legally preposterous if PD No. 705 is considered. To recall, this Decree states that all lands of the public domain that remain unclassified are considered forest lands that cannot be alienated until they have been reclassified as agricultural lands and declared alienable.[53] Applying this law to the facts of the present case, the land applied for, prior to March 15, 1982, must have still been forest land that, under the Constitution, cannot be alienated.

The deeper hole that the ponencia digs for itself in recognizing possession prior to declaration of alienability becomes apparent when it now cites *Naguit* as its authority. ***Unnoticed perhaps by the ponencia***, ***Naguit*** itself explicitly noted PD No. 705 and expressly and unabashedly pronounced that "*[a] different rule obtains for forest lands, such as those which form part of a reservation for provincial park purposes the possession of which cannot ripen into ownership. It is elementary in the law governing natural resources that forestland cannot be owned by private persons. As held in Palomo v. Court of Appeals,* ***forest land is not registrable and possession thereof, no matter how lengthy, cannot convert it into private property, unless such lands are reclassified and considered disposable and alienable***."[54]

How the *ponencia* would square this *Naguit* statement with the realities of PD No. 705 and its present ruling would be an interesting exercise to watch. It would, to say the least, be in a very confused position as it previously confirmed in *Naguit* the very same basic precept of law that it now debunks in its present ruling, citing the same *Naguit* ruling.

C. The PLA, the Civil Code and Prescription

In reading all the provisions of Book II of the Civil Code on the classification of property based on the person to whom it belongs, it should not be overlooked that these provisions refer to ***properties in general, i.e., to***

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53 Id. at 6.

54 *Supra* note 3, at 415-416; citations omitted, italics and emphasis ours.

both movable and immovable properties.[55] Thus, the Civil Code provisions on property ***do not refer to land alone***, much less do they refer solely to alienable and disposable lands of the public domain. For this latter specie of property, the PLA is the special governing law and, under the Civil Code itself, *the Civil Code provisions shall apply only in case of deficiency*.[56]

Whether, as in the present case, land of the public domain can be granted and registered on the basis of extraordinary prescription (*i.e.*, possession by the applicant and his predecessors-in-interest for a period of at least 30 years), ***the obvious answer*** is that the application can only effectively be allowed upon compliance with the PLA's terms. Classification as agricultural land must first take place to remove the land from its status as a land of the public domain and a declaration of alienability must likewise be made to render the land available or susceptible to alienation; the required possession, of course, has to follow and only upon completion does the land pass to "private" hands.

Whether land classified as "agricultural" and declared "alienable and disposable" can already be considered "patrimonial" property does not yield to an easy answer as these concepts involve different classification systems as discussed above. To be sure, the classification and declaration of a public land as alienable public agricultural land do not transfer the land into private hands nor divest it of the character of being State property that can only be acquired pursuant to the terms of the PLA. Separate from this requirement, a property – although already declared alienable and disposable – may conceivably still be held by the State or by any of its political subdivisions or agencies for ***public use*** or ***public service*** under the terms of the Civil Code. In this latter case, the property cannot be considered patrimonial that is subject to acquisitive prescription.

Based on these considerations, the two concepts of "disposable land of the public domain" and "patrimonial property" cannot directly be equated with one another. The requirements for their acquisition, however, must both be satisfied before they can pass to private hands.

An inevitable related question is the manner of enforcing Article 422 of the Civil Code that *"[p]roperty of the public dominion, when no longer intended for public use or public service, shall form part of the patrimonial property of the State,"* in light of the implication that patrimonial property may be acquired through prescription under Article 1113 of the Civil Code ("*Property of the State or any of its subdivision not patrimonial in character shall not be the object of prescription"*). ***This position, incidentally, is what the original decision in this case claims***.

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[55] CIVIL CODE, Article 419, in relation to Article 414.

[56] CIVIL CODE, Article 18, which states that "In matters which are governed by the Code of Commerce and special laws, their deficiency shall be supplied by the provisions of this Code."

A first simple answer is that the Civil Code provisions must yield when considered in relation with the PLA and its requirements. In other words, *when the property involved is a land of the public domain*, the consideration that it is not for public use or for public service, or its patrimonial character, initially becomes immaterial; any grant or alienation must first comply with the mandates of the Constitution on lands of the public domain and with the requirements of the PLA as a priority requirement.

Thus, if the question is whether such land, considered patrimonial solely under the terms of Article 422 of the Civil Code, can be acquired through prescription, the prior questions of whether the land is already alienable under the terms of the Constitution and the PLA and whether these terms have been complied with must first be answered. If the response is negative, then any characterization under Article 422 of the Civil Code is immaterial; only upon compliance with the terms of the Constitution and the PLA can Article 422 of the Civil Code be given full force. If the land is already alienable, Article 422 of the Civil Code, when invoked, can only be complied with on the showing that the property is no longer intended for public use or public service.

For all these reasons, alienable and disposable agricultural land cannot be registered under Section 14(2) of the PRD solely because it is already alienable and disposable. The alienability must be coupled with the required declaration under Article 422 of the Civil Code if the land is claimed to be patrimonial and possession under Section 14(2) of the PRD is invoked as basis for registration.

As an incidental matter, note that this PRD provision is no longer necessary for the applicant who has complied with the required possession under Section 48(b) of the PLA (*i.e.*, that there had been possession since June 12, 1945); he or she does not need to invoke Section 14(2) of the PRD as registration is available under Section 14(1) of the PRD. On the other hand, if the required period for possession under Section 48(b) of the PLA (or Section 14[1] of the PRD) did not take place, then the applicant's recourse would still be under the PLA through its other available modes (because a land of the public domain is involved), but not under its Section 48(b).

Section 14(2) of the PRD will apply only after the land is deemed to be "private" or has passed through one of the modes of grant and acquisition under the PLA, and after the requisite time of possession has passed, counted from the time the land is deemed or recognized to be private. In short, Section 14(2) of the PLA only becomes available ***to a possessor*** of land already held or deemed to be in private ownership and only after such possessor complies with the requisite terms of ordinary or extraordinary prescription. In considering compliance with the required possession,

possession prior to the declaration of alienability cannot of course be recognized or given legal effect, as already extensively discussed above.

To go back and directly answer now the issue that the petitioners directly pose in this case, no extraordinary prescription can be recognized in their favor as their effective possession could have started only after March 15, 1982. Based on the reasons and conclusions in the above discussion, they have not complied with the legal requirements, either from the point of view of the PLA or the Civil Code. Hence, the denial of their petition must hold.

ARTURO D. BRION
Associate Justice