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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SPS. ANTONIO FORTUNA and ERLINDA FORTUNA,
Petitioners,

- versus -

REPUBLIC OF THE PHILIPPINES,
Respondent.

G.R. No. 173423

Present:

CARPIO, *J., Chairperson,*
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

MAR 05 2014

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DECISION

BRION, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by the petitioners, spouses Antonio and Erlinda Fortuna, assailing the decision dated May 16, 2005[2] and the resolution dated June 27, 2006[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 71143. The CA reversed and set aside the decision dated May 7, 2001[4] of the Regional Trial Court (*RTC*) of San Fernando, La Union, Branch 66, in Land Registration Case (*LRC*) No. 2372.

THE BACKGROUND FACTS

In December 1994, the spouses Fortuna filed an **application for registration** of a 2,597-square meter land identified as **Lot No. 4457**,

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1 Filed under Rule 45 of the Rules of Court; *rollo*, pp. 11-A - 31.

2 Id. at 36-44. Penned by Associate Justice Rebecca de Guia-Salvador, and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Aurora Santiago-Lagman.

3 Id. at 46-48.

4 Id. at 49-53; penned by Judge Adolfo F. Alagar

situated in Bo. Canaoay, San Fernando, La Union. The application was filed with the RTC and docketed as **LRC No. 2372**.

The spouses Fortuna stated that Lot No. 4457 was originally owned by **Pastora Vendiola**, upon whose death was succeeded by her children, Clemente and Emeteria Nones. Through an affidavit of adjudication dated August 3, 1972, Emeteria renounced all her interest in Lot No. 4457 in favor of Clemente. Clemente later sold the lot in favor of Rodolfo Cuenca on May 23, 1975. Rodolfo sold the same lot to the spouses Fortuna through a deed of absolute sale dated May 4, 1984.

The spouses Fortuna claimed that they, through themselves and their predecessors-in-interest, have been **in quiet, peaceful, adverse and uninterrupted possession of Lot No. 4457 for more than 50 years**, and submitted as evidence the lot's survey plan, technical description, and certificate of assessment.

Although the respondent, Republic of the Philippines (*Republic*), opposed the application,[5] it did not present any evidence in support of its opposition. Since no private opposition to the registration was filed, the RTC issued an order of general default on November 11, 1996 against the whole world, except the Republic.[6]

In its Decision dated May 7, 2001,[7] **the RTC granted the application for registration in favor of the spouses Fortuna.** The RTC declared that "[the spouses Fortuna] have established [their] possession, including that of their predecessors-in-interest of the land sought to be registered, has been open, continuous, peaceful, adverse against the whole world and in the concept of an owner **since 1948**, or **for a period of over fifty (50) years**."[8]

The Republic appealed the RTC decision with the CA, arguing that the spouses Fortuna did not present an official proclamation from the government that the lot has been classified as alienable and disposable agricultural land. It also claimed that the spouses Fortuna's evidence – **Tax Declaration No. 8366** – showed that possession over the lot dates back only to 1948, thus, failing to meet the June 12, 1945 cut-off period provided under Section 14(1) of Presidential Decree (*PD*) No. 1529 or the *Property Registration Decree (PRD)*.

In its decision dated May 16, 2005,[9] **the CA reversed and set aside the RTC decision.** Although it found that the spouses Fortuna were able to

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5 The Government's opposition was filed on December 1, 1995, id. at 38.
6 Id. at 49, 53.
7 *Supra* note 4.
8 *Rollo*, p. 53; emphases ours.
9 *Supra* note 2.

establish the alienable and disposable nature of the land,[10] they failed to show that they complied with the length of possession that the law requires, *i.e.*, since June 12, 1945. It agreed with the Republic's argument that Tax Declaration No. 8366 only showed that the spouses Fortuna's predecessor-in-interest, Pastora, proved that she had been in possession of the land only since 1948.

The CA denied the spouses Fortuna's motion for reconsideration of its decision in its resolution dated June 27, 2006.[11]

THE PARTIES' ARGUMENTS

Through the present petition, the spouses Fortuna seek a review of the CA rulings.

They contend that the applicable law is Section 48(b) of Commonwealth Act No. 141 or the *Public Land Act* (*PLA*), as amended by Republic Act (*RA*) No. 1942. **RA No. 1942 amended the PLA by requiring *30 years*** of open, continuous, exclusive, and notorious possession to acquire imperfect title over an agricultural land of the public domain. **This 30-year period, however, was removed by PD No. 1073** and instead **required that the possession should be *since June 12, 1945***. The amendment introduced by PD No. 1073 was carried in Section 14(1) of the PRD.[12]

The spouses Fortuna point out that **PD No. 1073 was issued on January 25, 1977 and published on May 9, 1977**; and the PRD was issued on June 11, 1978 and published on January 2, 1979. On the basis of the Court's ruling in *Tañada, et al. v. Hon. Tuvera, etc., et al.*,[13] they allege that PD No. 1073 and the PRD should be deemed effective only on May 24, 1977 and January 17, 1979, respectively. By these dates, they claim to have already satisfied the 30-year requirement under the RA No. 1942 amendment because Pastora's possession dates back, at the latest, to 1947.

They allege that although Tax Declaration No. 8366 was made in 1948, this does not contradict that fact that Pastora possessed Lot No. 4457

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[10] The CA relied on the statement in the tracing cloth plan and the blue print copy thereof which stated that "[t]his survey is inside alienable and disposable area as per Project No. 13 L.C. Map No. 1395 certified August 7, 1940. It is outside any civil or military reservation." The tracing cloth plan has been approved by the Chief of the Survey Division and the Regional Director of the Region I Office of the Bureau of Lands. It also relied on the DENR-CENRO certificate dated July 19, 1999, which states that "there is, per record, neither any public land application filed nor title previously issued for the subject parcel[.]" (*Rollo*, p. 41.)

[11] *Supra* note 3.

[12] Section 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**. [emphasis ours]

[13] 220 Phil. 422 (1985).

before 1948. The failure to present documentary evidence proving possession earlier than 1948 was explained by Filma Salazar, Records Officer of the Provincial Assessor's Office, who testified that the records were lost beyond recovery due to the outbreak of World War II.

Notwithstanding the absence of documents executed earlier than 1948, the spouses Fortuna contend that evidence exists indicating that Pastora possessed the lot even before 1948. *First*, Tax Declaration No. 8366 does not contain a statement that it is a *new* tax declaration. *Second*, the annotation found at the back of Tax Declaration No. 8366 states that "this declaration cancels Tax Nos. 10543[.]"[14] Since Tax Declaration No. 8366 was issued in 1948, the cancelled Tax Declaration No. 10543 was issued, at the latest, in 1947, indicating that there was already an owner and possessor of the lot before 1948. *Third*, they rely on the testimony of one Macaria Flores in **LRC No. 2373**. LRC No. 2373 was also commenced by the spouses Fortuna to register **Lot Nos. 4462, 27066, and 27098**,[15] which were also originally owned by Pastora and are adjacent to the subject Lot No. 4457. Macaria testified that she was born in 1926 and resided in a place a few meters from the three lots. She stated that she regularly passed by these lots on her way to school since 1938. She knew the property was owned by Pastora because the latter's family had constructed a house and planted fruit-bearing trees thereon; they also cleaned the area. On the basis of Macaria's testimony and the other evidence presented in LRC No. 2373, the RTC granted the spouses Fortuna's application for registration of Lot Nos. 4462, 27066, and 27098 in its decision of January 3, 2005.[16] The RTC's decision has lapsed into finality unappealed.

The spouses Fortuna claim that Macaria's testimony in LRC No. 2373 should be considered to prove Pastora's possession prior to 1948. Although LRC No. 2373 is a separate registration proceeding, it pertained to lots adjacent to the subject property, Lot No. 4457, and belonged to the same predecessor-in-interest. Explaining their failure to present Macaria in the proceedings before the RTC in LRC No. 2372, the spouses Fortuna said "it was only after the reception of evidence x x x that [they] were able to trace and establish the identity and competency of Macaria[.]"[17]

Commenting on the spouses Fortuna's petition, the Republic relied mostly on the CA's ruling which denied the registration of title and prayed for the dismissal of the petition.

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14 *Rollo*, p. 20-A.
15 The three lots have a total area of 4,006 square meters; id. at 59.
16 Id. at 59.
17 Id. at 27.

THE COURT'S RULING

We **deny** the petition for failure of the spouses Fortuna to sufficiently prove their compliance with the requisites for the acquisition of title to alienable lands of the public domain.

The nature of Lot No. 4457 as alienable and disposable public land has not been sufficiently established

The Constitution declares that all lands of the public domain are owned by the State.[18] Of the four classes of public land, *i.e.*, agricultural lands, forest or timber lands, mineral lands, and national parks, only agricultural lands may be alienated.[19] Public land that has not been classified as alienable agricultural land remains part of the inalienable public domain. Thus, **it is essential for any applicant for registration of title to land derived through a public grant to establish foremost the alienable and disposable nature of the land**. The PLA provisions on the grant and disposition of alienable public lands, specifically, Sections 11 and 48(b), will find application only from the time that a public land has been classified as agricultural and declared as alienable and disposable.

Under Section 6 of the PLA,[20] the classification and the reclassification of public lands are the prerogative of the Executive Department. The President, through a presidential proclamation or executive order, can classify or reclassify a land to be included or excluded from the public domain. The Department of Environment and Natural Resources (*DENR*) Secretary is likewise empowered by law to approve a land classification and declare such land as alienable and disposable.[21]

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18 CONSTITUTION, Article XII, Section 2.

19 CONSTITUTION, Article XII, Section 3.

20 Sec. 6. The President, upon the recommendation of the Secretary of Agriculture and Natural Resources, 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.

21 Section 13 of PD No. 705 or the *Revised Forestry Code of the Philippines*, approved on May 19, 1975, pertaining to the system of land classification, states:

> **x x x. The Department Head [now DENR Secretary]** shall study, devise, determine and prescribe the criteria, guidelines and methods for the proper and accurate classification and survey of all lands of the public domain into agricultural, industrial or commercial, residential, resettlement, mineral, timber or forest, and grazing lands, and into such other classes as now or may hereafter be provided by law, rules and regulations.
>
> In the meantime, the Department Head shall simplify through inter-bureau action the present system of determining which of the unclassified lands of the public domain are needed for forest purposes and declare them as permanent forest to form part of the forest reserves. **He shall decree those classified and determined not to be needed for forest purposes as alienable and disposable lands**, the administrative jurisdiction and

Accordingly, jurisprudence has required that an applicant for registration of title acquired through a public land grant must present *incontrovertible evidence* that the land subject of the application is alienable or disposable by establishing the existence of a *positive act of the government,* such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute.

In this case, the CA declared that the alienable nature of the land was established by the **notation in the survey plan,**[22] which states:

> This survey is *inside alienable and disposable area* as per Project No. 13 L.C. Map No. 1395 certified August 7, 1940. It is outside any civil or military reservation.[23]

It also relied on the **Certification dated July 19, 1999** from the DENR Community Environment and Natural Resources Office (*CENRO*) that "there is, per record, neither any public land application filed nor title previously issued for the subject parcel[.]"[24] However, we find that ***neither of the above documents is evidence of a positive act from the government reclassifying the lot as alienable and disposable agricultural land of the public domain.***

Mere notations appearing in survey plans are inadequate proof of the covered properties' alienable and disposable character.[25] These notations, at the very least, only establish that the land subject of the application for registration falls within the approved alienable and disposable area per verification through survey by the proper government office. **The applicant, however, must also present a copy of the original classification of the land into alienable and disposable land, as declared by the DENR Secretary or as proclaimed by the President.**[26] In *Republic v. Heirs of Juan Fabio*,[27] the Court ruled that

> [t]he applicant for land registration must prove that *the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable*, **and** *that the land subject of the application for registration falls within the approved area per verification*

> management of which shall be transferred to the Bureau of Lands: Provided, That mangrove and other swamps not needed for shore protection and suitable for fishpond purposes shall be released to, and be placed under the administrative jurisdiction and management of, the Bureau of Fisheries and Aquatic Resources. Those still to be classified under the present system shall continue to remain as part of the public forest.

22 The Survey Plan was approved by the Regional Chief of the Survey Division and the Regional Director of the Region I Office of the Bureau of Lands; *rollo*, p. 41.

23 Id. at 41; italics ours.

24 Id. at 41.

25 *Republic of the Philippines v. Tri-Plus Corporation*, 534 Phil. 181, 194 (2006); and *Republic v. Medida*, G.R. No. 195097, August 13, 2012, 678 SCRA 317, 326.

26 *Republic of the Philippines v. T.A.N. Properties, Inc.,* 578 Phil. 441, 452-453 (2008).

27 G.R. No. 159589, December 23, 2008, 575 SCRA 51, 77; italics and emphases ours.

> *through survey by the PENRO*[28] *or CENRO*. In addition, the applicant must present **a copy of the original classification of the land into alienable and disposable, as declared by the DENR Secretary, or as proclaimed by the President.**

The survey plan and the DENR-CENRO certification are not proof that the President or the DENR Secretary has reclassified and released the public land as alienable and disposable. The offices that prepared these documents are ***not the official repositories or legal custodian*** of the issuances of the President or the DENR Secretary declaring the public land as alienable and disposable.[29]

For failure to present incontrovertible evidence that Lot No. 4457 has been reclassified as alienable and disposable land of the public domain though a positive act of the Executive Department, the spouses Fortuna's claim of title through a public land grant under the PLA should be denied.

In judicial confirmation of imperfect or incomplete title, the period of possession should commence, at the latest, as of May 9, 1947

Although the above finding that the spouses Fortuna failed to establish the alienable and disposable character of Lot No. 4457 serves as sufficient ground to deny the petition and terminate the case, we deem it proper to continue to address the other important legal issues raised in the petition.

As mentioned, the PLA is the law that governs the grant and disposition of alienable agricultural lands. Under Section 11 of the PLA, alienable lands of the public domain may be disposed of, among others, by **judicial confirmation of imperfect or incomplete title**. This mode of acquisition of title is governed by Section 48(b) of the PLA, the *original version* of which states:

> Sec. 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 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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> x x x x
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> (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-**

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28 Provincial Environment and Natural Resources Offices.

29 *Rep. of the Philippines v. T.A.N. Properties, Inc., supra* note 26, at 490-491.

> **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. [emphasis supplied]

On June 22, 1957, the cut-off date of July 26, 1894 was replaced by a 30-year period of possession under RA No. 1942. Section 48(b) of the PLA, as amended by RA No. 1942, read:

> (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. [emphasis and underscore ours]

On January 25, 1977, PD No. 1073 replaced the 30-year period of possession by requiring possession since June 12, 1945. Section 4 of PD No. 1073 reads:

> SEC. 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**. [emphasis supplied]

Under the PD No. 1073 amendment, possession of at least ***32 years*** – from 1945 up to its enactment in 1977 – is required. This effectively impairs the vested rights of applicants who had complied with the 30-year possession required under the RA No. 1942 amendment, but whose possession commenced only after the cut-off date of June 12, 1945 was established by the PD No. 1073 amendment. To remedy this, the Court ruled in *Abejaron v. Nabasa*[30] that "Filipino citizens who by themselves or their predecessors-in-interest have been, ***prior to the effectivity of P.D. 1073 on January 25, 1977***, 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 30 years, or at least since January 24, 1947** may apply for judicial confirmation of their imperfect or incomplete title under Sec. 48(b) of the [PLA]." **January 24, 1947 was considered as the cut-off date as this was exactly 30 years counted backward from January 25, 1977 – the effectivity date of PD No. 1073.**

It appears, however, that **January 25, 1977 was the date PD No. 1073 was *enacted;*** based on the certification from the National Printing Office,[31] **PD No. 1073 was *published* in Vol. 73, No. 19 of the Official**

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30 411 Phil. 552, 570; emphases and italics ours.

31 *Rollo*, p. 55.

Gazette, months later than its enactment or on **May 9, 1977.** This uncontroverted fact materially affects the cut-off date for applications for judicial confirmation of incomplete title under Section 48(b) of the PLA.

Although Section 6 of PD No. 1073 states that "[the] Decree shall take effect upon its promulgation," the Court has declared in *Tañada, et al. v. Hon. Tuvera, etc., et al.*[32] that the publication of laws is an indispensable requirement for its effectivity. "[A]ll statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature."[33] Accordingly, Section 6 of PD No. 1073 should be understood to mean that the decree took effect only upon its publication, or on May 9, 1977. This, therefore, moves **the cut-off date for applications for judicial confirmation of imperfect or incomplete title under Section 48(b) of the PLA to May 8, 1947.** In other words, ***applicants must prove that they 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 30 years, or at least since May 8, 1947.***

The spouses Fortuna were unable to prove that they possessed Lot No. 4457 since May 8, 1947

Even if the Court assumes that Lot No. 4457 is an alienable and disposable agricultural land of the public domain, the spouses Fortuna's application for registration of title would still not prosper for failure to sufficiently prove that they possessed the land since May 8, 1947.

The spouses Fortuna's allegation that: (1) the absence of a notation that Tax Declaration No. 8366 was a new tax declaration and (2) the notation stating that Tax Declaration No. 8366 cancels the earlier Tax Declaration No. 10543 both indicate that Pastora possessed the land prior to 1948 or, at the earliest, in 1947. We also observe that Tax Declaration No. 8366 contains a sworn statement of the owner that was subscribed on October 23, **1947**.[34] While these circumstances may indeed indicate possession *as of 1947*, none proves that it commenced *as of the cut-off date of May 8, 1947*. Even if the tax declaration indicates possession since 1947, it does not show the nature of Pastora's possession. Notably, Section 48(b) of the PLA speaks of possession ***and*** occupation. "Since these words are separated by the conjunction *and*, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word *occupation*, it seeks to delimit the all encompassing effect of constructive possession. Taken together with the words open, continuous,

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32 *Supra* note 13, at 434; and *Tañada v. Hon. Tuvera*, 230 Phil. 528, 535 (1986).
33 *Tañada v. Hon. Tuvera*, *supra,* at 535.
34 CA Records, p. 94.

exclusive and notorious, the word *occupation* serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction."[35] Nothing in Tax Declaration No. 8366 shows that Pastora exercised acts of possession and occupation such as cultivation of or fencing off the land. Indeed, the lot was described as "cogonal."[36]

The spouses Fortuna seeks to remedy the defects of Tax Declaration No. 8366 by relying on Macaria's testimony in a separate land registration proceeding, LRC No. 2373. Macaria alleged that she passed by Pastora's lots on her way to school, and she saw Pastora's family construct a house, plant fruit-bearing trees, and clean the area. However, the Court is not convinced that Macaria's testimony constituted as the "well-nigh incontrovertible evidence" required in cases of this nature.

The records disclose that the spouses Fortuna acquired adjoining parcels of land, all of which are claimed to have previously belonged to Pastora. These parcels of land were covered by three separate applications for registration, to wit:

a. LRC No. N-1278, involving Lot Nos. 1 and 2, with a total area of 2,961 sq. m., commenced by Emeteria;
b. LRC No. 2373, involving Lot Nos. 4462, 27066, and 27098, with a total area of 4,006 sq. m., commenced by the spouses Fortuna; and
c. LRC No. 2372 (the subject case), involving Lot No. 4457, with a total area of 2,597 sq. m.

As these cases involved different but adjoining lots that belonged to the same predecessor-in-interest, the spouses Fortuna alleged that the final rulings in LRC Nos. N-1278 and 2373,[37] upholding Pastora's ownership, be taken into account in resolving the present case.

Notably, the total land area of the adjoining lots that are claimed to have previously belonged to Pastora is 9,564 sq. m. This is too big an area for the Court to consider that Pastora's claimed acts of possession and occupation (as testified to by Macaria) encompassed the entirety of the lots. Given the size of the lots, it is unlikely that Macaria (age 21 in 1947) could competently assess and declare that its entirety belonged to Pastora because she saw acts of possession and occupation in what must have been but a limited area. As mentioned, Tax Declaration No. 8366 described Lot No. 4457 as "cogonal," thus, Macaria could not have also been referring to Lot No. 4457 when she said that Pastora planted fruit-bearing trees on her properties.

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35 *Republic of the Phils. v. Alconaba*, 471 Phil. 607, 620 (2004); italics supplied, citation omitted.

36 *Rollo*, p. 54.

37 LRC No. N-1278 was granted in favor of Emeteria in a decision dated November 9, 1972 (CA Records, pp. 74-76) and resulted in the issuance of Original Certificate of Title No. 1337 (id. at 70). LRC No. 2373 was granted in favor of the spouses Fortuna in a decision dated January 3, 2005 (*rollo*, pp. 56-59).

The lower courts' final rulings in LRC Nos. N-1278 and 2373, upholding Pastora's possession, do not tie this Court's hands into ruling in favor of the spouses Fortuna. Much to our dismay, the rulings in LRC Nos. N-1278 and 2373 do not even show that the lots have been officially reclassified as alienable lands of the public domain or that the nature and duration of Pastora's occupation met the requirements of the PLA, thus, failing to convince us to either disregard the rules of evidence or consider their merits. In this regard, we reiterate our directive in *Santiago v. De los Santos*:[38]

> Both under the 1935 and the present Constitutions, the conservation no less than the utilization of the natural resources is ordained. **There would be a failure to abide by its command if the judiciary does not scrutinize with care applications to private ownership of real estate. To be granted, they must be grounded in well-nigh incontrovertible evidence**. Where, as in this case, no such proof would be forthcoming, there is no justification for viewing such claim with favor. It is a basic assumption of our polity that lands of whatever classification belong to the state. Unless alienated in accordance with law, it retains its rights over the same as *dominus*.

WHEREFORE, the petition is **DENIED**. The decision dated May 16, 2005 and the resolution dated June 27, 2006 of the Court of Appeals in CA-G.R. CV No. 71143 are **AFFIRMED** insofar as these dismissed the spouses Antonio and Erlinda Fortuna's application of registration of title on the basis of the grounds discussed above. Costs against the spouses Fortuna.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

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38 158 Phil. 809, 816 (1974); citations omitted, emphasis ours, italics supplied.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice