THIRD DIVISION

G.R. No. 192956 – VENUS BATAYOLA BAGUIO, JUPITER BATAYOLA, MANUEL BATAYOLA, JR., ISABELO BATAYOLA, RAMILO BATAYOLA, RAUL BATAYOLA, LEONARDO BATAYOLA, MILAGROS BATAYOLA, JULIETA BATAYOLA CANTILLAS, ENRIQUETA BATAYOLA ROSACENA, FELICIANO BATAYOLA, ONESEFERO PACINA, VERONICA FERNANDEZ BATAYOLA, LUCIO HUBAHIB, VICENTA REVILLA, PERLA UMBAO, BRIGILDA MORADAS, and THE REGIONAL DIRECTOR, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES VII, *petitioners*, v. HEIRS OF RAMON ABELLO, namely: the late LOLITA ABELLO DE SEARES, represented by her heirs: ROSARIO A. JIMENEZ, CANDELARIA A. CHAN LIM, RAFAEL ABELLO, and HEIDE ABELLO CABALUNA, and the late EDUARDO ABELLO represented by his heirs SANDRA S. ABELLO and IAN GERARD S. ABELLO, *respondents*;

G.R. No. 193032 – HEIRS OF RAMON ABELLO, namely: the late LOLITA ABELLO DE SEARES, represented by her heirs: ROSARIO A. JIMENEZ, CANDELARIA A. CHAN LIM, RAFAEL ABELLO, and HEIDE ABELLO CABALUNA, and the late EDUARDO ABELLO represented by his heirs SANDRA S. ABELLO and IAN GERARD S. ABELLO, *petitioners*, v. VENUS BATAYOLA BAGUIO, JUPITER BATAYOLA, MANUEL BATAYOLA, JR., ISABELO BATAYOLA, RAMILO BATAYOLA, RAUL BATAYOLA, LEONARDO BATAYOLA, MILAGROS BATAYOLA, JULIETA BATAYOLA CANTILLAS, ENRIQUETA BATAYOLA ROSACENA, FELICIANO BATAYOLA, ONESEFERO PACINA, VERONICA FERNANDEZ BATAYOLA, LUCIO HUBAHIB, VICENTA REVILLA, PERLA UMBAO, BRIGILDA MORADAS, and THE REGIONAL DIRECTOR, DEPARTMENT OF ENIRONMENT AND NATURAL RESOURCES VII, *respondents*.

Promulgated:
July 24, 2019
x----------Mis.R.D.C.Batt----------x

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur with the *ponencia*. Since the property is a foreshore land, it is part of the public domain, and neither of the parties is entitled to it.

However, I seek to clarify my position on two (2) points.

I

First, the regalian doctrine's application is not as expansive as it may appear in the *ponencia*. I do not agree that it "is a fundamental tenet of our land ownership and registration laws[.]"[1]

The regalian doctrine originated from early Spanish decrees that embraced the feudal theory that all lands were held by the Crown.[2] However, since the American colonization period,[3] the doctrine has already been made subject to several exceptions. In *Cariño v. Insular Government*,[4] this Court recognized native titles and held that some lands were never deemed to have been public land:

> It is true that Spain, in its earlier decrees, embodied the universal feudal theory that all lands were held from the Crown, . . . It is true also that, in legal theory, sovereignty is absolute, and that, as against foreign nations, the United States may assert, as Spain asserted, absolute power. *But it does not follow that, as against the inhabitants of the Philippines, the United States asserts that Spain had such power. When theory is left on one side, sovereignty is a question of strength, and may vary in degree. How far a new sovereign shall insist upon the theoretical relation of the subjects to the head in the past, and how far it shall recognize actual facts, are matters for it to decide.*
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> . . . *Whatever may have been the technical position of Spain, it does not follow that, in the view of the United States, [plaintiff who held the land as owner] had lost all rights and was a mere trespasser when the present government seized his land. The argument to that effect seems to amount to a denial of native titles throughout an important part of the island of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce.*
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> . . . No one, we suppose, would deny that, so far as consistent with paramount necessities, our first object in the internal administration of the islands is to *do justice* to the natives, not to exploit their country for private gain. By the Organic Act of July 1, 1902, c. 1369, § 12, 32 Stat. 691, *all the property and rights acquired there by the United States are to be administered "for the benefit of the inhabitants thereof."* . . .
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> . . . .
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> It is true that, by § 14, the government of the Philippines is empowered to enact rules and prescribe terms for perfecting titles to public lands where some, but not all, Spanish conditions had been fulfilled, and to issue patents to natives for not more than sixteen hectares

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1 Ponencia, p. 11.

2 *Cariño v. Insular Government*, 212 U.S. 449, 457–460 (1909).

3 *See* J. Leonen, Separate Opinion in *Heirs of Malabanan v. Republic*, 717 Phil. 141, 203–209 (2013) [Per J. Bersamin, En Banc].

4 212 US 449.

> of public lands actually occupied by the native or his ancestors before August 13, 1898. But this section perhaps might be satisfied if confined to cases where the occupation was of land admitted to be public land, and had not continued for such a length of time and under such circumstances as to give rise to the understanding that the occupants were owners at that date. We hesitate to suppose that it was intended to declare every native who had not a paper title a trespasser, and to set the claims of all the wilder tribes afloat. It is true again that there is excepted from the provision that we have quoted as to the administration of the property and rights acquired by the United States such land and property as shall be designated by the President for military or other reservations, as this land since has been. But there still remains the question what property and rights the United States asserted itself to have acquired.
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> Whatever the law upon these points may be, and we mean to go no further than the necessities of decision demand, every presumption is and ought to be against the government in a case like the present. *It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land. Certainly, in a case like this, if there is doubt or ambiguity in the Spanish law, we ought to give the applicant the benefit of the doubt.* Whether justice to the natives and the import of the organic act ought not to carry us beyond a subtle examination of ancient texts, or perhaps even beyond the attitude of Spanish law, humane though it was, it is unnecessary to decide. If, in a tacit way, it was assumed that the wild tribes of the Philippines were to be dealt with as the power and inclination of the conqueror might dictate, Congress has not yet sanctioned the same course as the proper one "for the benefit of the inhabitants thereof."[5] (Emphasis supplied)

This position was further affirmed when the 1987 Constitution limited the State's ownership to lands *of public domain*. Contrary to the regalian doctrine, not *all* lands are presumed to be owned by the State.[6] Article XII, Section 2 of the 1987 Constitution states, in part:

> SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated.

Furthermore, the due process clause of the 1987 Constitution protects all types of property, including those not covered by a paper title, those whose ownership resulted from possession and prescription, and those who hold their properties in the concept of owner since time immemorial.[7] I

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5 Id. at 457–460.

6 J. Leonen, Separate Opinion in *Heirs of Malabanan v. Republic*, 717 Phil. 141, 203–209 (2013) [Per J. Bersamin, En Banc].

7 Id. at 206–207.

elaborated on this position in my separate opinion in *Heirs of Malabanan v. Republic*:[8]

> We have also recognized that "time immemorial possession of land in the concept of ownership either through themselves or through their predecessors in interest" suffices to create a presumption that such lands "have been held in the same way from before the Spanish conquest, and never to have been public land." This is an interpretation in *Cariño v. Insular Government* of the earlier version of Article III, Section 1 in the McKinley's Instructions. The case clarified that the *Spanish sovereign's concept of the "regalian doctrine" did not extend to the American colonial period and to the various Organic Acts extended to the Philippines.*
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> . . . .
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> *Cariño* is often misinterpreted to cover only lands for those considered today as part of indigenous cultural communities. However, nothing in its provisions limits it to that kind of application. We could also easily see that the progression of various provisions on *completion of imperfect titles* in earlier laws were efforts to assist in the recognition of these rights. In my view, these statutory attempts should never be interpreted as efforts to limit what has already been substantially recognized through constitutional interpretation.[9] (Emphasis supplied, citations omitted)

This position echoes the same rulings in previous and succeeding cases.

In *Republic v. Court of Appeals*,[10] this Court allowed the registration of a parcel of land situated in Beckel, La Trinidad, Benguet in favor of Benguet natives and Ibaloi tribespeople. This was despite the opposition of the Director of Lands, who argued that the property is a forest land within the Central Cordillera Forest Reserve. This Court held:

> The evidence of record thus appears unsatisfactory and insufficient to show clearly and positively that the land here involved had been officially released from the Central Cordillera Forest Reserve to form part of the alienable and disposable lands of the public domain. We consider and so hold that once a parcel of land is shown to have been included within a Forest Reservation duly established by Executive Proclamation, as in the instant case, a presumption arises that the parcel of land continues to be part of such Reservation until clear and convincing evidence of subsequent withdrawal therefrom or de-classification is shown. A simple, unsworn statement of a minor functionary of the Bureau of Forest Development is not, by itself, such evidence. Under the view we take of this case, however, the definite resolution of this question becomes unnecessary.

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8 717 Phil. 141 (2013) [Per J. Bersamin, En Banc].

9 Id. at 207–209.

10 278 Phil. 1 (1991) [Per J. Feliciano, Third Division].

The applicants in the instant case are natives of Benguet and members of the Ibaloi tribe. They are members of a cultural minority whose application for registration of land should be considered as falling under Section 48(c) of C.A. No. 141. At the time private respondents filed their application, the text of Section 48 read:

> "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 thereafter, under the Land Registration Act, to wit:
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> . . . .
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> "(b) Those who by themselves or through their predecessors-in-interest have been, in continuous, exclusive and notorious possession and occupation of *agricultural lands of the public domain,* under a *bona fide* claim of acquisition or 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*. Those 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.
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> "(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 subsection (b) hereof." . . .
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> . . . .

The Court stressed in *Director of Lands vs. Funtilar*:

> "The Regalian doctrine which for as the basis of our land laws and, in fact, all laws governing natural resources is a revered and long standing principle. *It must, however, be applied together with the constitutional provisions on social justice and land reform and must be interpreted in a way as to avoid manifest unfairness and injustice.*
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> "*Every application for a concession of public lands has to be viewed in the light of its peculiar circumstances.* A strict application of the *Heirs of Amunategui v. Director of Forestry (supra)* ruling is warranted whenever a portion of the public domain is in danger of ruthless exploitation, fraudulent titling, or other questionable practices. But *when an application appears to enhance the very reasons*

> *behind the enactment of Act 496*, as amended, or the Land Registration Act, and *Commonwealth Act 141, as amended*, or the Public Land Act, then *their provisions should not be made to stand in the way of their own implementation.*" . . .
>
> The land registration court found that the possession of private respondents, if tacked on to that of their predecessors-in-interest, sufficiently meets the requirement of thirty (30) years open, continuous, exclusive and notorious possession. Private respondents acquired the property from their deceased father who, in turn, had inherited it from private respondents' grandfather. Even before the death of their father, private respondents were already occupying the land. They lived on it since their father had built a house on the land and had planted it with bananas, camote, avocadoes, oranges and mangoes. Dayotao Paran had declared the land for taxation purposes prior to 1938 and had since paid the corresponding realty taxes.
>
> The Declarations of Real Property submitted by private respondents indicated that the land had become suitable to agriculture. Aside from sweet potatoes and vegetables, private respondents harvested rice from the land. To enhance their agricultural production, private respondents or their predecessors-in-interest had built terraces and dikes. Forester Luis Baker noted this fact in his report.[11] (Emphasis in the original, citations omitted)

In *Republic v. Court of Appeals*,[12] this Court again allowed the registration of a parcel of land found within the Central Cordillera Forest Reserve on the same ground—possession of the property in the concept of owner since time immemorial. It held:

> The present case, however, admits of a certain twist as compared to the case of *Director of Lands*, in that evidence in this case shows that as early as 1933, Aguinaya, mother of petitioner has filed an Application for Free Patent for the same piece of land. In the said application, Aguinaya claimed to have been in possession of the property for 25 years prior to her application and that she inherited the land from her father, named Acop, who himself had been in possession of the same for 60 years before the same was transferred to her.
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> *It appears, therefore, that respondent Cosalan and his predecessors-in-interest have been in continuous possession and occupation of the land since the 1840s.* Moreover, as observed by the appellate court, the application of Aguinaya was returned to her, not due to lack of merit, but —
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> > "As the land applied for has been occupied and cultivated prior to July 26, 1894, title thereto should be perfected thru judicial proceedings in accordance with Section 45 (b) of the Public Land Act No. 2874, as amended."

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[11] Id. at 13–17.

[12] 284 Phil. 575 (1992) [Per J. Nocon, Second Division].

> Despite the general rule that forest lands cannot be appropriated by private ownership, it has been previously held that "while the Government has the right to classify portions of public land, *the primary right of a private individual who possessed and cultivated the land in good faith much prior to such classification must be recognized and should not be prejudiced by after-events which could not have been anticipated* . . . Government in the first instance may, by reservation, decide for itself what portions of public land shall be considered forestry land, unless private interests have intervened before such reservation is made."
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> As early as in the case of *Oh Cho v. Director of Lands* this Court has held that "all lands that were not acquired from the Government, either by purchase or by grant, belong to the public domain. An exception to the rule would be any land that should have been in the possession of an occupant and of his predecessors-in-interest since time immemorial, for such possession would justify the presumption that the land had never been part of the public domain or that it had been a private property even before the Spanish conquest."[13] (Emphasis supplied, citations omitted)

More recently, in *Republic v. Cosalan*,[14] this Court again granted the application for registration of title of ancestral land by a member of the Ibaloi Tribe. This was despite the contention of the Department of Environment and Natural Resources-Cordillera Administrative Region that the land was part of the Central Cordillera Forest Reserve:

> As a rule, forest land located within the Central Cordillera Forest Reserve cannot be a subject of private appropriation and registration. Respondent, however, was able to prove that the subject land was an ancestral land, and had been openly and continuously occupied by him and his predecessors[-]in-interest, who were members of the ICCs/IPs.
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> . . . .
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> Ancestral lands are covered by the concept of native title that "refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest." To reiterate, they are considered to have never been public lands and are thus indisputably presumed to have been held that way.
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> . . . .
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> From the foregoing, it appears that lands covered by the concept of native title are considered an exception to the *Regalian Doctrine* embodied in Article XII, Section 2 of the Constitution which provides that all lands of the public domain belong to the State which is the source of any asserted right to any ownership of land.
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> . . . .

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[13] Id. at 579–580.

[14] G.R. No. 216999, July 4, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64401> [Per J. Gesmundo, Third Division].

> . . . Section 12, Chapter III of IPRA Law states that individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eighteen percent (18%) or more, are hereby classified as alienable and disposable agricultural lands.
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> . . . .
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> In *Heirs of Gamos v. Heirs of Frando*, it was held that where all the necessary requirements for a grant by the Government are complied with through actual physical possession openly, continuously, and publicly, with a right to a certificate of title to said land under the provisions of Chapter VIII of Act No. 2874, amending Act No. 926 (carried over as Chapter VIII of Commonwealth Act No. 141), the possessor is deemed to have already acquired by operation of law not only a right to a grant, but a grant of the Government, for it is not necessary that a certificate of title be issued in order that said grant may be sanctioned by the court — an application therefore being sufficient.
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> Certainly, it has been proven that respondent and his predecessors-in[-]interest had been in open and continuous possession of the subject land since time immemorial even before it was declared part of the Central Cordillera Forest Reserve under Proclamation No. 217. Thus, the registration of the subject land in favor of respondent is proper.[15] (Citations omitted)

II

Moreover, I note that while the *ponencia* rightfully ruled that the parties should have filed the appropriate foreshore lease application as provided in the Public Land Act,[16] this procedure is no longer viable to parties today.

The leasing of foreshore lands was provided in the Public Land Act because it was allowed under the 1973 Constitution, as amended. Its Article XIV, Section 8 stated:

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[15] Id.

[16] Commonwealth Act No. 141 (1936), secs. 58, 59, and 61 state:

> SECTION 58. Any tract of land of the public domain which, being neither timber nor mineral land, is intended to be used for residential purposes or for commercial, industrial, or other productive purposes other than agricultural, and is open to disposition or concession, shall be disposed of under the provisions of this chapter and not otherwise.
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> SECTION 59. The lands disposable under this title shall be classified as follows:
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> . . . .
>
> (b) Foreshore;
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> . . . .
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> SECTION 61. The lands comprised in classes (a), (b), and (c) of section fifty-nine shall be disposed of to private parties by lease only and not otherwise, as soon as the President, upon recommendation by the Secretary of Agriculture, shall declare that the same are not necessary for the public service and are open to disposition under this chapter. The lands included in class (d) may be disposed of by sale or lease under the provisions of this Act.

> SECTION 8. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, wildlife, and other natural resources of the Philippines belong to the State. With the exception of agricultural, industrial or commercial, residential, and resettlement lands of the public domain, natural resources shall not be alienated, and no license, concession, or *lease* for the exploration, development, exploitation, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for not more than twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases, beneficial use may be the measure and the limit of the grant. (Emphasis supplied)

However, the 1987 Constitution no longer mentions lease as a tenurial arrangement for our natural resources. Article XII, Section 2 of the 1987 Constitution provides:

> SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into *co-production, joint venture, or production-sharing agreements* with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.
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> The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.
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> The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.
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> The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.
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> The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution. (Emphasis supplied)

The change in the text of the 1987 Constitution indicates an intent to modify the previous provision. It should be interpreted in accordance with this intent.[17]

Thus, should the State wish to explore, develop, or utilize its natural resources, including its foreshore lands, through private parties, it may now only do so through co-production, joint venture, or production-sharing agreements.

ACCORDINGLY, I vote to **DENY** the Petitions.

MARVIC M.V.F. LEONEN
Associate Justice

[17] *Aratuc v. Commission on Elections*, 177 Phil. 205 [Per J. Barredo, En Banc].