EN BANC

G.R. No. 247866 – FEDERATION OF CORON, BUSUANGA, PALAWAN FARMER'S ASSOCIATION, INC. (FCBPFAI), represented by its Chairman RODOLFO CADAMPOG, SR.; SAMAHAN NG MAGSASAKA SA STO. NIÑO, BUSUANGA, PALAWAN (SAMMASA), represented by its Chairperson EDGARDO FRANCISCO; SANDIGAN NG MAMBUBUKID NG BINTUAN CORON, INC. (SAMBICO), represented by its Chairman RODOLFO CADAMPOG, SR.; RODOLFO CADAMPOG, SR., in his personal capacity as a Filipino Citizen, and in behalf of millions of Filipino occupants and settlers on public lands considered as squatters in their own country *Petitioners*, **v. THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES [DENR] and THE DEPARTMENT OF AGRARIAN REFORM,** *Respondents.*

Promulgated:
September 15, 2020

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CONCURRING OPINION

LEONEN, *J.*:

Petitioners are federations of farmers in Coron and Busuanga, Palawan, whose lands were placed under the coverage of the Comprehensive Agrarian Reform Program. They allege that since 1960, they had been tilling and occupying the parcels of land registered under the Mercury Group of Companies and Jose Sandoval.[1]

However, the Department of Agrarian Reform discontinued the land distribution after the Department of Environment and Natural Resources had claimed that the land was an unclassified forest under Section 3(a) of Presidential Decree No. 705.[2]

This Petition[3] assails the constitutionality of Section 3(a) of Presidential Decree No. 705. The provision reads:

SECTION 3. Definitions.

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1 *Rollo*, pp. 6–7.
2 Id.
3 Id. at 3–30.

> (a) Public forest is 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.[4]

First, petitioners aver that the declaration of all unclassified public lands as public forests contravenes the Constitution.[5] They argue that past and present constitutions have consistently classified public lands depending on their character.[6] They contend that Section 3(a) of Presidential Decree No. 705 violates this constitutional prescription because it automatically converts all public lands as forest land.[7]

Second, petitioners contend that the provision violates due process because it is an undue deprivation of property.[8] They argue that under Act No. 926, the first Public Land Act, all public agricultural lands possessed since July 26, 1894 were converted into private lands.[9] Pursuant to this law, an occupant-owner can apply for judicial confirmation of imperfect title or free patent under Act No. 2874 and Commonwealth Act No. 141 without prior declaration that the land is alienable and disposable.[10] Through this process, ownership is not acquired but merely confirmed.[11]

Petitioners further argue that Presidential Decree No. 705 disregarded vested ownership when it required prior classification of land as alienable and disposable for the purposes of prescription or confirmation of title.[12] By classifying all public lands as forests, the law effectively declares as inalienable lands that have been declared as agricultural under the 1935, 1973, and 1987 Constitutions.[13]

Petitioners further lament the disconnect between the law and the actual classifications of land, claiming that under Section 3(a) of Presidential Decree No. 705, all unclassified lands were automatically reclassified as forests regardless of their nature. They point out that with the current law, there are urbanized lands without trees but are still considered forests.[14]

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4 Presidential Decree No. 705 (1975), sec. 3(a).
5 *Rollo,* p. 7.
6 Id. at 8. The Philippine Bill of 1902 and the 1935 Constitution classified public lands into agricultural, forest, and timber lands. The 1973 Constitution provided more classifications, but this was abbreviated by the 1987 Constitution into four (4) categories: agricultural, forest, timber, and national parks.
7 Id. at 9.
8 Id.
9 Id. at 13.
10 Id. at 13–15 and 17–18.
11 Id. at 16.
12 Id. at 15.
13 Id. at 19.
14 Id. at 22.

In their Comment,[15] respondents claim that petitioners do not have the legal standing to file the Petition as they have failed to show that they sustained any real injury.[16]

Respondents also maintain that Section 3(a) of Presidential Decree No. 705 is not unconstitutional because it is consistent with the Constitution and the regalian doctrine.[17] They assert that petitioners are mistaken in their interpretation of Philippine Bill of 1902 and Act No. 926 because there is no presumption that all public lands are converted to agricultural lands under Act No. 926. The law merely laid down how land registration courts should classify public domain lands. Ultimately, they maintain, classification still depends on the proof presented.[18]

Respondents argue that pursuant to the regalian doctrine and Article XII, Section 2 of the 1987 Constitution, all lands of public domain are owned by the State.[19] They assert that Section 3(a) of Presidential Decree No. 705 merely echoes this recognition in categorizing all unclassified lands of public domain as public forests.[20]

Respondents further dispute petitioners' claim that Section 3(a) is an undue deprivation of property. Considering that there was no automatic classification of lands as agricultural lands, they claim that the unclassified lands remained part of the public domain and no property right on these lands was vested upon their occupants.[21]

In their Reply,[22] petitioners assert that they have the legal standing to file the Petition because their property rights are affected by Presidential Decree No. 705.[23] Moreover, they claim that their Petition raises an issue of transcendental importance because it is bound to affect Filipinos who have occupied and tilled lands for generations.[24]

Petitioners reiterate that before Presidential Decree No. 705 took effect, there was no requirement that agricultural lands first be declared alienable and disposable before being registered under Commonwealth Act No. 141.[25] They point out that public agricultural lands are lands acquired from Spain that are neither timber nor mineral in nature and these lands are alienable; hence, they are no longer subject to presidential or congressional declaration of

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15 Id. at 85–98.
16 Id. at 90–91.
17 Id. at 91.
18 Id. at 93.
19 Id. at 94.
20 Id. at 95.
21 Id.
22 Id. at 104–153.
23 Id. at 104.
24 Id. at 105.
25 Id. at 106.

alienability.[26] The presumption that the land is agricultural still holds true. The government can make a forest reservation on public agricultural lands but subject to prior vested rights.[27]

Petitioners add that that this presumption is consistent with Article 421 of the Civil Code. Under this provision, there is no need for a prior declaration of alienability or manifestation that a public agricultural land is not intended for public use or service for it to be considered patrimonial property of the State.[28] Rather, they say that the property is presumed patrimonial, and the State bears the burden to declare that the land is intended for public service or use for it to become part of public dominion.[29]

Petitioners further aver that under Sections 32 and 54 of Act No. 926, public agricultural lands were not only considered alienable, but deemed alienated as they were opened to homestead, sale, or lease application.[30] Such lands will only be withdrawn from disposition after the declaration that they a non-alienable.[31] Moreover, the requirement of declaration of alienability only applied to reclassification of forest to agricultural lands.[32]

Petitioners point out that since *Cariño v. Insular Government*,[33] jurisprudence has held that public agricultural land may be automatically converted to private property by prescription.[34] Section 3(a) of Presidential Decree No. 705 is, in effect, a State-sponsored grabbing of agricultural land whose ownership is already vested on its occupants.[35]

Lastly, petitioners argue that Section 3(a) renders the Comprehensive Agrarian Reform Program useless,[36] as it automatically converts all unclassified lands into forest lands, which cannot be covered by agrarian reform.[37]

The *ponencia* dismissed the Petition. First, it held that petitioners have no legal standing to file the Petition because they failed to show real and actual injury.[38]

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26 Id. at 107–108, citing *Mapa v. Insular Government*, 10 Phil. 175 (1908) [Per J. Willard, First Division]; and *De Alcoa v. Insular Government*, 13 Phil. 159 (1909) [Per J. Torres, En Banc].

27 Id. at 113–114 citing *Ankron v. Government of the Philippine Islands*, 40 Phil. 10 [Per J. Johnson, First Division].

28 Id. at 126–128.

29 Id. at 128.

30 Id. at 128–129, citing Act No. 926 (1903), secs. 32 and 54.

31 Id. at 128, citing Act No. 926 (1903), sec. 71.

32 Id. at 132, citing ADM. CODE, sec. 1827.

33 41 Phil. 935 (1909) [Per J. Holmes].

34 *Rollo*, pp. 132–135.

35 Id. at 137.

36 Id. at 150.

37 Id. at 151, citing Republic Act No. 6657 (1988), sec. 4.

38 Ponencia, p. 5.

Second, the *ponencia* reasons that "unclassified land[s] cannot be considered alienable and disposable land of public domain pursuant to the Regalian doctrine."[39] It maintains that there is no presumption that a land of public domain is agricultural. The Constitution and the laws merely allowed the government to classify lands of public domain.[40]

According to the *ponencia*, while Section 3(a) of Presidential Decree No. 705 indeed declared unclassified lands of public domain as forests, it is not unconstitutional because it is in accord with the regalian doctrine, which the *ponencia* says is incorporated in the Constitution.[41] It adds that Section 3(a) "merely reiterates that unclassified lands are in the same footing as forest lands because these belong to the State; these are not alienable and disposable land of public domain; and these are not subject to private ownership."[42] Even without this provision, the *ponencia* maintains that "unclassified lands are still not subject to private ownership because they belong to the State and are not alienable and disposable lands of public domain."[43]

To the *ponencia*, petitioners' view that unclassified lands are presumed disposable violates the regalian doctrine. As settled by this Court, for a land to be considered alienable and disposable land of public domain, there must be a positive act from the government.[44] Until then, the land remains part of the public domain and its occupation cannot ripen into ownership.[45]

Third, the *ponencia* held the classification of a land as forest does not refer to its actual nature, but is only a legal description. Hence, even if a parcel of land no longer has forest cover, it may still be classified as a public forest under the law.[46]

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39 Id. at 6.

40 Id. at 6–10.
1987 CONST., art. XII, sec. 2 provides 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.
Commonwealth Act No. 141 (1936), sec. 6 provides:
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.

41 Id. at 11.

42 Id.

43 Id.

44 Id. at 13.

45 Id. at 15 citing *Republic v. Abarca*, G.R. No. 217703, October 9, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65854> [Per J. J.C. Reyes, Jr., Second Division].

46 Id. at 13 citing *Republic v. Spouses Alonso*, G.R. No. 210738, August 14, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65724> [Per J. J.C. Reyes, Jr., Second Division].

The *ponencia* concludes that the issue presented by petitioners is a question of policy—a matter beyond the jurisdiction of this Court.

Let me express a few points.

The regalian doctrine, while often repeated in our jurisprudence, is a legal fiction that has no clear constitutional mooring. It presumes that all lands are public based on the premise that the State's land ownership was passed down from the Spanish Crown. However, this concept is not textually expressed in our Constitution. Article XII, Section 2 of the 1987 Constitution only states that all lands of public domain are owned by the State, but nowhere does it provide that all unclassified and untitled lands are presumed public lands.

Thus, lands shall not be presumed as part of the public domain and shall remain as such unless the State reclassifies them as alienable.[47] Jurisprudence since *Cariño*[48] has acknowledged that there are lands that have never become part of the public domain, even if they are found untitled and unregistered.

Further, Section 15 of the Presidential Decree No. 705 must be declared unconstitutional because it violates due process. It declares all unclassified lands as forests without regard to lands whose ownership are already vested upon its occupants.

The definition of public forest in Section 3(a) must be read in conjunction with Section 15, which uses a single criterion in determining in classifying lands. Using the land's slope as the sole factor in classifying land as forest or as timber land is patently arbitrary.

I

In the precolonial era, land ownership in the Philippines was communal in nature.[49] Land titles were vested not to natural persons but to the communal barangay.[50]

When the Spaniards came, the recognition of property rights transitioned to individual ownership and the titling of land was introduced. While communal ownership was still acknowledged, only individual ownership and rights were deemed alienable and were allowed documentation

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

48 41 Phil. 935 (1909) [Per J. Holmes].

49 Owen James Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Era*, 63 PHIL. L.J. 82, 85 (1988).

50 Id. at 85–86.

and registration.[51] Royal decrees allowed for the titling of lands when "long and continuous possession" was shown.[52]

Claimants then had to prove tradition and submit witness depositions. Alleging that this process caused controversy, the Spanish government required all landowners to obtain official documentation of their ownership.[53] In 1893, the Spanish Mortgage Law put in place a systematic registration of titles.[54] However, due to government officials' abuses, lack of effective notice, illiteracy, and the costs of registration, land ownership registration became inaccessible to a large majority of natives, who could "only show their title by actual possession."[55] In an attempt to address this problem, a unilateral registration deadline was imposed through the Maura Law of 1894—the law that presaged the regalian doctrine.[56]

As provided in its preamble, the Maura Law sought to "insure to the natives, in the future, whenever it may be possible, the necessarily land for cultivation, in accordance with traditional usages." However, this policy is contradicted by Article 4 of the law, which stated that lands not titled will "revert back to the State." The provision further stated that "[a]ny claim to such lands by those who might have applied for adjustment of the same but have not done so [on April 17, 1895], will not avail themselves in any way nor at any time."[57] With the Maura Law in place, the recognition of customary land rights was effectively denied.[58] It introduced a legal concept that presumed all undocumented lands as owned by the Spanish Crown and its successors.[59]

This policy was cemented in the 1898 Treaty of Paris, which expressly stated that "all immovable properties . . . belong to the Crown of Spain and were to be ceded and relinquished to the new colonial master."[60] It was also textually reflected in the Philippine Bill of 1902. Section 12 stated:

> SECTION 12. *That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of*

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51 Id. at 86.

52 Jose Mencio Molintas, *The Philippine Indigenous People's Struggle for Land and Life: Challenging Legal Texts,* 21 ARIZ. J. INT'L. AND COMP. L. 269, 283 (2004).

53 Owen James Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Era,* 63 PHIL. L.J. 82, 87 (1988).

54 Jose Mencio Molintas, *The Philippine Indigenous People's Struggle For Land and Life: Challenging Legal Texts,* 21 ARIZ. J. INT'L. AND COMP. L. 269, 283 (2004), citing Renato Constantino, THE PHILIPPINES: A PAST REVISITED (1975).

55 Owen James Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Era,* 63 PHIL. L.J. 82, 107 (1988).

56 Id. at 108. The Maura Law, or the Royal Decree of February 13, 1894, was named after the then Minister of Colonies, Antonio Maura y Montaner.

57 Id.

58 Id. at 109.

59 Owen James Lynch, Jr. and Kirk Talbott, *Legal Responses to the Philippine Deforestation Crises*, 20 N.Y.U. Int'l. L. & Pol. 679, 686 (1988).

60 Jose Mencio Molintas, *The Philippine Indigenous People's Struggle For Land and Life: Challenging Legal Texts*, 21 Ariz. J. Int'l. And Comp. L. 269, 284 (2004).

> *peace with Spain*, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, *are hereby placed under the control of the Government of said Islands,* to be administered for the benefit of the inhabitants thereof, except as provided in this Act.[61] (Emphasis supplied)

In the 1904 case of *Valenton v. Murciano*,[62] the regalian doctrine was first introduced in our jurisprudence. In *Valenton*, claimants alleged ownership over a parcel of untitled public land based on adverse possession for over 30 years, counting from 1860 until they filed the case in 1890. In dismissing the case, this Court ruled that there was no right of prescription against the State as to public lands. It explained:

> It happened, in the course of time, that tracts of the public land were found in the possession of persons who either had no title papers therefor issued by the State, or whose title papers were defective, either because the proper procedure had not been followed or because they had been issued by persons who had no authority to do so. Law 14, title 12, book 4 of said compilation (referred to in the regulations of June 25, 1880, for the Philippines) was the first of a long series of legislative acts intended to compel those in possession of the public lands, without written evidence of title, or with defective title papers, to present evidence as to their possession or grants, and obtain the confirmation of their claim to ownership. . . .
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> While the State has always recognized the right of the occupant to a deed if he proves a possession for a sufficient length of time, yet it has always insisted that he must make that proof before the proper administrative officers, and obtain from them his deed, and until he did that the State remained the absolute owner.
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> *In the preamble of this law there is, as is seen, a distinct statement that all those lands belong to the Crown which have not been granted by Philip, or in his name, or by the kings who preceded him. This statement excludes the idea that there might be lands not so granted, that did not belong to the king. It excludes the idea that the king was not still the owner of all ungranted lands, because some private person had been in the adverse occupation of them.* By the mandatory part of the law all the occupants of the public lands are required to produce before the authorities named, and within a time to be fixed by them, their title papers. And those who had good title or showed prescription were to be protected in their holdings. It is apparent that it was not the intention of the law that mere possession for a length of time should make the possessors the owners of the lands possessed by them without any action on the part of the authorities. It is plain that they were required to present their claims to the authorities and obtain a confirmation thereof. What the period of prescription mentioned in this law was does not appear, but later, in 1646, law 19 of the same title declared "that no one shall be 'admitted to adjustment' unless he has possessed the lands for ten years."[63] (Emphasis supplied)

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61 Philippine Bill of 1902, sec. 12.

62 3 Phil. 537 (1904) [Per J. Willard, En Banc].

63 Id. at 542–544.

Nevertheless, the 1909 case of *Cariño v. Insular Government*[64] rectified this doctrine and held that not all lands are presumed part of public domain.

In *Cariño*, Mateo Cariño claimed that he and his ancestors had occupied and tilled a land in Benguet since time immemorial, one he had inherited the land in accordance with Igorot custom. He said that the land was not titled pursuant to the Spanish royal decrees despite his application in 1893 to 1894 and 1896 to 1897. Thus, in 1902, Cariño applied for ownership, though he could only show a possessory title.[65]

His petition before the Court of Land Registration was approved, but this was reversed on appeal before the Benguet Court of First Instance. When the case reached the Philippine Supreme Court in 1906, the ruling was affirmed. Citing Article 4 of the Maura Law, the Court reasoned that Cariño could no longer assert ownership over the land after he had failed to have it registered within the period set in the law.[66]

Upon appeal, the United States Supreme Court ruled in favor of Cariño. It held that the United States was not bound to assert the same powers held by its predecessor, and the government must respect the rights under the laws of the United States, including due process rights, granted in favor of Cariño.[67] Thus:

> If we suppose for the moment that the government's contention is so far correct that the Crown of Spain in form asserted a title to this land at the date of the Treaty of Paris, to which the United States succeeded, it is not to be assumed without argument that the plaintiff's case is at an end. It is true that Spain, in its earlier decrees, embodied the universal feudal theory that all lands were held from the Crown, and perhaps the general attitude of conquering nations toward people not recognized as entitled to the treatment accorded to those in the same zone of civilization with themselves. 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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> The Province of Benguet was inhabited by a tribe that the Solicitor-General, in his argument, characterized as a savage tribe that never was brought under the civil or military government of the Spanish Crown. It seems probable, if not certain, that the Spanish officials would not have

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64 41 Phil. 935 (1909) [Per J. Holmes].
65 Id.
66 *Cariño v. Insular Government*, 7 Phil. 132 (1906) [Per J. Willard, First Division].
67 *Cariño v. Insular Government of the Philippine Islands*, 41 Phil. 935 (1909) [Per J. Holmes].

> granted to anyone in that province the registration to which formerly the plaintiff was entitled by the Spanish laws, and which would have made his title beyond question good. Whatever may have been the technical position of Spain it does not follow that, in the view of the United States, he 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.[68]

The United States Supreme Court explained that under the Philippine Bill of 1902, "all the property and rights acquired there by the United States are to be administered 'for the benefit of the inhabitants thereof.'"[69] It added that the same charter likewise guarded against undue deprivation of property. Taking these into consideration, the United States Supreme Court held that due process rightfully extended to unregistered and untitled properties whose owners presumably have not heard and availed of the registration processes. In the same vein, the charter did not consider as part of public domain lands held "by native custom and by long association."[70]

Cariño further pointed out that the presumption ought to be against the State. Thus, in cases where the land in question has been held since time immemorial, it must be presumed to have been held in private ownership before the Spanish occupation and never to have been public land. The United States Supreme Court held:

> 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 attitudes 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."[71]

Cariño does not only embrace ancestral land rights, but it applies to all people who have held land since time immemorial.

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68 Id. at 938–939.
69 Id. at 940.
70 Id.
71 Id. at 941.

The ruling establishes two important doctrines. First, it affirms the people's constitutional right over the land since time immemorial; and second, it settles that the Spanish colonial concept of regalian doctrine did not extend to the American occupation and to the subsequent organic acts enacted. *Cariño* concludes that the Maura Law "should not be construed as confiscation, but as the withdrawal of a privilege"[72] to register a title.

In 1903, Act No. 926, otherwise known as the Public Land Act, mandated the expropriation of "unoccupied, unreserved, unappropriated agricultural public land" through homestead.[73] It continued to require registration and titling of land ownership, but it also provided a presumption in favor of persons who have openly, continuously, exclusively, and notoriously possessed and occupied agricultural public lands. Section 54(6) of Act No. 926 states:

> 6. *All persons who by themselves or their predecessors in interest has been in the open, continuous exclusive, and notorious possession and occupation of agricultural public lands*, as defined by said Act of Congress of July first, nineteen hundred and two, under a bona fide claim of ownership except as against the Government, for a period of ten years next preceding the taking effect of this Act except when prevented by war or force majeure, shall be *conclusively presumed to have performed all the conditions essential to a government grant and to have received the same*, and shall be entitled to a certificate of title to such land under the provisions of this chapter.

Similar to *Cariño*, the Public Land Act provides for judicial confirmation in affirming the native title claims. However, unlike *Cariño*, the Public Land Act no longer demands a claim of ownership based on occupation "since time immemorial." Rather, it only requires possession and occupation for a specified number of years.[74]

This provision was reiterated in Section 44 of Commonwealth Act No. 141, which grants free patents to citizens who do not own more than 24 hectares of land and have "continuously occupied and cultivated . . . agricultural public lands" since July 4, 1955.[75]

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72 Id. at 944.

73 Act No. 926 (1903), sec. 1 provides:
SECTION 1. Any citizen of the Philippine Islands, or of the United States, or of any Insular possession thereof, over the age of twenty-one years or the head of a family may, as hereinafter provided, enter a homestead of not exceeding sixteen hectares of unoccupied, unreserved unappropriated agricultural public land in the Philippine Islands, as defined by the Act of Congress of July first, nineteen hundred and two entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes which shall be taken, if on surveyed lands, by legal subdivisions, but if on unsurveyed lands shall be located in a body which shall be as nearly as practicable rectangular in shape and not more than eight hundred meters in length; but no person who is the owner of more than sixteen hectares of land in said islands or who has had the benefits of any gratuitous allotment of sixteen hectares of land since the acquisition of the Islands by the United States, shall be entitled to the benefits of this chapter.

74 *See* Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L.J. 268, 280 (1982).

75 Commonwealth Act No. 141 (1936), sec. 44.

This provision was central in the 1980 case of *Herico v. Dar*.[76] In *Herico*, this Court ruled that upon compliance with the provision, the possessor acquires a right to a grant even without a certificate of title. As a result, the land is acknowledged as privately owned, withdrawn from the public domain.

In 1956, a free patent was granted to respondent Cipriano Dar (Dar) after claiming that he has possessed and cultivated a parcel of land since 1922. According to a report of a Public Land Inspector, nobody else claimed the land and Dar cultivated around 8.6 hectares of land, introducing 700 coconut trees ranging from 20 to 30 years. Subsequently, petitioner Moises Herico (Herico) filed a complaint seeking the cancellation of Dar's title, which was granted by the Court of First Instance. This was reversed by the Court of Appeals.

Upon appeal, this Court reversed the appellate court's decision. It found that Herico's predecessors-in-interest possessed the land way back in 1914 and declared the land for taxation purposes in 1940—earlier than Dar's tax declaration in 1952. It ruled that under Republic Act No. 1942, the law amending Commonwealth Act No. 141, Herico's occupation and cultivation for more than 30 years since 1914 has vested on him title over the land. The land, then, has been effectively withdrawn from public dominion. This Court expounded:

> As interpreted in several cases when the conditions as specified in the foregoing provision are complied with, the possessor is deemed to have acquired, by operation of law, a right to a grant, a government grant, without the necessity of a certificate of title being issued. The land, therefore, ceases to be of the public domain, and beyond the authority of the Director of Lands to dispose of. The application for confirmation is a mere formality, the lack of which does not affect the legal sufficiency of the title as would be evidenced by the patent and the Torrens title to be issued upon the strength of said patent.[77] (Citation omitted)

The judicial confirmation of title under Section 48(b) of Commonwealth Act No. 141 was later amended by Republic Act No. 1942. It dispensed with the requirement of possession beginning not later than July 26, 1984, removed the phrase "except as against the Government," and qualified the possession "under a bona fide claim of acquisition of ownership."[78]

Cariño and *Herico* affirm that ownership claims based on long occupation and possession of land are still recognized in our system. They

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[76] 184 Phil. 401 (1980) [Per J. De Castro, First Division].
[77] Id. at 406–407.
[78] Republic Act No. 1942 (1957), sec. 1.

recognize that not all untitled lands are automatically deemed part of the public domain and that there is no absolute presumption that all lands are presumed public lands. The due process clause, present from Philippine Bill of 1902 to the present Constitution, respects acquired ownership of land, whether or not ownership is confirmed by a title.

Thus, I agree with the *ponencia* that a "native title to land, or ownership of land by Filipinos by virtue of a claim of ownership since time immemorial and independent of any grant from the Spanish Crown[,]"[79] is an exception to the regalian doctrine.

This pronouncement not only affirms the validity of a *native* title, but also shows respect and sensitivity by doing away with the reference to "indigenous" or the pejorative "tribal," which is astute and prescient.

We are all natives in relation to our ancestral properties. The distinction of tribal or indigenous was introduced by our colonizers to convince their metropolis that there were "civilized" and "uncivilized" among us. Through their many laws, they favored ethnolinguistic groups, such as Tagalogs and Ilocanos, that easily succumbed to their rule and painfully marginalized indigenous groups through the legal order, suggesting that they are weak and uncivilized.[80]

The distinction was a political device employed by the Spanish colonizers who labeled as "uncivilized" Filipinos who refused to identify as Christians, and as "civilized" those who were converted and who were subservient to the Spaniards and their beliefs. This dichotomy was further utilized by the Americans, who labeled uncolonized groups as "non-Christian tribes." As Professor Owen J. Lynch observed:

> At the end of the Spanish era an estimated ten to twenty percent of the native population continued to live outside the colonial pale. Most either belonged to Islamicized communities in the southern parts of the colony or lived among the upland interiors of the major islands. The U.S. Regime generically labeled these labeled these peoples as 'non-Christian tribes.' An official Christian/non-Christian dichotomy ensued and was reified in the minds of the colonial elites. The dichotomy ignored the indigenous cultural traits that endured among the Hispanicized, the varied degrees of Hispanization among ostensible Christians, and the cultural variations among those labeled non-Christian.
>
> One of the greatest, and largely unrecognized, ironies of the Taft era was the tendency to overlook the wide spectrum of westernized acculturation among the Philippine masses, as well as the enduring indigenous influences in their lives. As a result, the much disdained Hispanicized peasantry was lumped together and indiscriminately labeled,

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79 Ponencia, p. 7.

80 See *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660 (1919) [Per J. Malcolm, En Banc].

> along with Filipino elites, as 'civilized.' Worcester insisted that people from the three main Christian ethnic groups, i.e. the Tagalogs, Ilocanos, and Visayans, were culturally homogeneous and 'to be treated as a class.'. . .[81]

The benefit of possession since time immemorial means that the holding of the property as an owner must be unbroken. It should not discriminate between a marginal farmer, whose ethnicity is not yet categorized as "indigenous," and a Tagbanua or Palawanon.

Cariño is a correction of the colonial illusion that all land rights and titles emanated from the Spanish Crown. However, despite its promulgation, *Cariño* was deliberately ignored by the U.S. regime. The errors in our land policies, especially on ancestral domain rights, were never reviewed.[82]

Thus, the *ponencia*'s assertion and affirmation of the doctrine in *Cariño* is a relief not only to indigenous groups, but also to many marginalized people who have long struggled to defend the native titles to their lands.

II

The Philippine Bill of 1902 granted the colonial government the authority to classify public lands into agricultural, timber, or mineral lands, depending on their "agricultural character and productiveness[.]" Section 13 of Philippine Bill of 1902 provides:

> SECTION 13. *That the Government of the Philippine Islands*, subject to the provisions of this Act and except as herein provided, *shall classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands*, but such rules and regulations shall not go into effect or have the force of law until they have received the approval of the President, and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensuing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: Provided, That a single homestead entry shall not exceed sixteen hectares in extent.[83] (Emphasis supplied)

In the 1908 case of *Mapa v. Insular Government*,[84] this Court settled the scope and meaning of agricultural land vis-à-vis other land classifications.

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81 1 OWEN J. LYNCH, COLONIAL LEGACIES IN A FRAGILE REPUBLIC: PHILIPPINE LAND LAW AND STATE FORMATION 243–244 (1st ed., 2011).

82 Id. at 437.

83 Philippine Bill of 1902, sec. 13.

84 10 Phil. 175 (1908) [Per J. Willard, First Division].

In *Mapa*, petitioner Cirilo Mapa (Mapa) sought registration of his land, a lowland he and his ancestors had uninterruptedly possessed and used as fish pond, nipa lands, and salt deposits. The government opposed this, saying his land was not agricultural land.[85]

In that case, this Court determined whether the land was an agricultural land within the meaning of Section 54 of Act No. 926. The provision reads:

> SECTION 54. The following described persons or their legal successors in right, occupying public lands in the Philippine Islands, or claiming to own any such lands or an interest therein, but whose titles to such lands have not been perfected, may apply to the Court of Land Registration of the Philippine Islands for confirmation of their claims and the issuances of a certificate of title therefor, to wit:
>
> . . . .
>
> 6) All persons who by themselves or their predecessors in interest have been in the open, continuous exclusive, and notorious possession and occupation of agricultural public lands, as defined by said act of Congress of July first, nineteen hundred and two, under a bona fide claim of ownership except as against the Government, for a period of ten years next preceding the taking effect of this act, except when prevented by war, or force majeure, shall be conclusively presumed to have performed all the conditions essential to a Government grant and to have received the same, and shall be entitled to a certificate of title to such land under the provisions of this chapter.

This Court, ruling in favor of Mapa, held that Section 13 of the Philippine Bill of 1902 did not provide an exact standard and definition of what comprises an agricultural land. Nevertheless, Section 13 stated that it was incumbent upon the government to "[m]ake rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands."[86] Referring to the definition in the Public Land Act, this Court ruled that the phrase "agricultural land" embraced those lands which are not timber or mineral lands.[87]

This definition was expanded later in *Ramos v. Director of Lands*,[88] which settled that the presumption that land is agricultural in nature absent proof to the contrary.

In *Ramos*, petitioner Cornelio Ramos (Ramos) sought the registration of his possessory title over a land under Section 54 of the Public Land Act. The Director of Lands opposed, arguing that Ramos had not acquired a good

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85 Id.
86 Philippine Bill of 1902, sec. 13.
87 *Mapa v. Insular Government*, 10 Phil. 175 (1908) [Per J. Willard, First Division].
88 39 Phil. 175 (1918) [Per J. Malcolm, En Banc].

title from the Spanish government and that the land was a forest land. The trial court denied the registration.[89]

Upon appeal, this Court upheld the presumption that lands are agricultural in nature and ruled in favor of Ramos. It explained that under the Philippine Bill of 1902 and the Public Land Act, the determination of the land's classification is by exclusion, meaning, it must be determined "if the land is forestal or mineral in nature and, if not so found, to consider it to be agricultural land."[90]

To be classified as a forest, the land must be determined as "forestal" in nature by the Bureau of Forestry. The government policy then is to leave the task of determining forest land to a board of experts, which would investigate if a land may be considered forest land. In its investigation, the Bureau of Forestry uses an exacting list of criteria to classify a land as forest. It ascertains the lands' slope, exposure, soil type, soil cover character, cultivation, among other bio-physical factors. This Court stated:

> In many cases, in the opinion of the Bureau of Forestry, lands without a single tree on them are considered as true forest land. For instance, mountain sides which are too steep for cultivation under ordinary practice and which, if cultivated, under ordinary practice would destroy the big natural resource of the soil, by washing, is considered by this Bureau as forest land and in time would be reforested. Of course, examples exist in the Mountain Province where steep hillsides have been terraced and intensive cultivation practiced but even then the mountain people are very careful not to destroy forests or other vegetative cover which they from experience have found protect their water supply. Certain chiefs have lodged protests with the Government against other tribes on the opposite side of the mountain cultivated by them, in order to prevent other tribes from cutting timber or destroy cover guarding their source of water for irrigation.
>
> . . . .
>
> The method employed by the Bureau of Forestry in making inspection of lands, in order to determine whether they are more adapted for agricultural or forest purposes by a technical and duly trained personnel on the different phases of the conservation of natural resources, is based upon a previously prepared set of questions in which the different characters of the land under inspection are discussed, namely:
>
> Slope of land: Level; moderate; steep; very steep.
>
> Exposure: North; South; East; West.
>
> Soil: Clay; sandy loam; sand; rocky; very rocky.
>
> Character of soil cover: Cultivated, grass land, brush land, brush land and timber mixed, dense forest.

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89 Id.

90 Id. at 181.

> If cultivated, state crops being grown and approximate number of hectares under cultivation. (Indicate on sketch.)
>
> For growth of what agricultural products is this land suitable?
>
> State what portion of the tract is wooded, name of important timber species and estimate of stand in cubic meters per hectare, diameter and percentage of each species.
>
> If the land is covered with timber, state whether there is public land suitable for agriculture in vicinity, which is not covered with timber.
>
> Is this land more valuable for agricultural than for forest purposes? (State reasons in full.)
>
> Is this land included or adjoining any proposed or established forest reserve or communal forest? Description and ownership of improvements.
>
> If the land is claimed under private ownership, give the name of the claimant, his place of residence, and state briefly (if necessary on a separate sheet) the grounds upon which he bases his claim.
>
> When the inspection is made on a parcel of public land which has been applied for, the corresponding certificate is forwarded to the Director of Lands; if it is made on a privately claimed parcel for which the issuance of a title is requested from the Court of Land Registration, and the inspection shows the land to be more adapted for forest purposes, then the Director of Forestry requests the Attorney-General to file an opposition, sending him all data collected during the inspection and offering him the forest officer as a witness.[91]

This Court held that the agricultural presumption was based on the government's policy of favoring conversion of lands from public domain to private ownership.[92]

Subsequently, in *J.H. Ankron v. The Government of the Philippine Islands*,[93] this Court reiterated the agricultural presumption, expounding that the classification of land as forestal or mineral is a matter of proof. It held:

> [W]hether the particular land in question belongs to one class or another is a question of fact. The mere fact that a tract of land has trees upon it or has mineral within it is not of itself sufficient to declare that one is forestry land and the other, mineral land. There must be some proof of the extent and present or future value of the forestry and of the minerals. While, as we have just said, many definitions have been given for "agriculture," "forestry," and "mineral" lands, and that in each case it is a question of fact, we think it is safe to say that in order to be forestry or mineral land the proof must show that it is more valuable for the forestry or the mineral which it contains than it is for agricultural purposes. (Sec. 7, Act No. 1148.) It is not

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91 Id. at 183–185.

92 Id.

93 40 Phil. 10 (1919) [Per J. Johnson, First Division].

> sufficient to show that there exists some trees upon the land or that it bears some mineral. Land may be classified as forestry or mineral today, and, by reason of the exhaustion of the timber or mineral, be classified as agricultural land tomorrow. And vice-versa, by reason of the rapid growth of timber or the discovery of valuable minerals, lands classified as agricultural today may be differently classified tomorrow. Each case must be decided upon the proof in that particular case, having regard for its present or future value for one or the other purposes. We believe, however, considering the fact that it is a matter of public knowledge that a majority of the lands in the Philippine Islands are agricultural lands, that the courts have a right to presume, in the absence of evidence to the contrary, that in each case the lands are agricultural lands until the contrary is shown. Whatever the land involved in a particular land registration case is forestry or mineral land must, therefore, be a matter of proof. Its superior value for one purpose or the other is a question of fact to be settled by the proof in each particular case.[94]

The presumption in favor of agricultural land is only a disputable presumption. It may be overcome by showing the actual nature of the land. This is consistent with the text of Philippine Bill of 1902, which stated that the determination of land was hinged on its "agricultural character and productiveness."[95] Thus, the Bureau of Forestry's investigation is crucial because it is able to ascertain each land's actual character.

However, in the 1970s, the Marcos administration sought to conserve the country's forest cover. Citing a study by a forestry professor, the government adopted a policy seeking to retain at least 42%, or 12,600,000 hectares, of the country's land area for forest purposes. The study had suggested that lands at least 18% in slope must be considered forest lands based on its calculation that approximately 42% of our land area was 18% in slope.[96]

As a result, the 18%-slope criteria under Presidential Decree No. 705 was established.[97] Section 15 states that any land at least 18% in slope shall be classified as alienable and disposable:

> SECTION 15. *Topography.* — No land of the public domain eighteen per cent (18%) in slope or over shall be classified as alienable and disposable, nor any forest land fifty per cent (50%) in slope or over, as grazing land.
>
> Lands eighteen per cent (18%) in slope or over which have already been declared as alienable and disposable shall be reverted to the classification of forest lands by the Department Head, to form part of the forest reserves, unless they are already covered by existing titles or approved public land application, or actually occupied openly,

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94 Id. at 15–16.

95 Philippine Bill of 1902, sec. 13.

96 Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L.J. 268, 285 (1982).

97 Id.

> continuously, adversely and publicly for a period of not less than thirty (30) years as of the effectivity of this Code, where the occupant is qualified for a free patent under the Public Land Act: Provided, That said lands, which are not yet part of a well-established communities, shall be kept in a vegetative condition sufficient to prevent erosion and adverse effects on the lowlands and streams: Provided, Further, That when public interest so requires, steps shall be taken to expropriate, cancel defective titles, reject public land application, or eject occupants thereof.[98]

This is consistent with Section 3(a), which creates a blanket declaration that all unclassified public lands are considered forest lands. Alienable and disposable lands at least 18% slope are reverted to the classification of forest land. This sudden shift in land policy meant that a sole criterion is now used to declare a land as a forest, regardless of its nature. In fact, this criterion led to unrealistic pronouncements declaring lands as forestal even if other biophysical factors show otherwise.[99]

The imposition of a single criterion has drawn criticisms for being an insufficient standard to determine how to economically use the lands without endangering the ecosystem.[100] It fails to account for other factors that will protect and respect the property rights of landowners whose lands are surrounded by forest zones.[101]

Section 15 of Presidential Decree No. 705 violates due process.

Due process under Article III, Section 1 of the 1987 Constitution protects property rights and precludes undue deprivation of property, regardless of the type and nature of the property. It applies not only to titled lands but also to lands that may be unregistered, but whose ownership was vested upon their occupants by prescription.

The arbitrary conversion of lands to forest lands under Section 15 of Presidential Decree No. 705, as well as its proscription against alienability of lands on the basis of a single criterion, violates due process. It unduly severs ownership by automatically declaring lands as inalienable forest lands as long as they have a slope of at least 18%. There may be lands that remain untitled and unregistered but whose ownership had already been vested on their occupants. Section 15 effectively disregards property rights by enacting an outright conversion of any unclassified land as a forest.

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98 Presidential Decree No. 705 (1975), sec. 15.

99 See *Secretary of the Department of Environment and Natural Resources v. Yap*, 589 Phil. 156 (2008) [Per J. R.T. Reyes, En Banc], where Boracay Islands, even if admittedly stripped of its forest cover and has become a commercial land, was still classified as forest pursuant to Section 3(a) of Presidential Decree No. 705.

100 Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L.J. 268, 285–286 (1982).

101 Id. at 286.

Section 15 cannot find refuge in the regalian doctrine. To reiterate, this legal fiction is a jurisprudential aberration that has no constitutional basis. None of our constitutions, past and present, have ever provided a presumption that all lands are public. Thus, it is unsound for this Court to pronounce that "unclassified lands are in the same footing as forest lands"[102] as there may be unclassified lands that have become subject to private ownership. It is likewise unwarranted to equate unclassified lands to forest lands because there are other classifications of lands under our Constitution.

Thus, I take exception to the validity of Section 15 of the Presidential Decree No. 705.

Nevertheless, as pointed out in the *ponencia*, the exception established in *Cariño* remains an option for those who seek recognition of their native titles to their lands.

Accordingly, I vote to **DISMISS** the Petition.

MARVIC M.V.F. LEONEN
Associate Justice

[102] Ponencia, p. 11.

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court