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 Chairman, EDGARDO FRANCISCO; SANDIGAN NG MAMBUBUKID NG BINTUAN CORON, INC. (SAMBICO), represented by its Chairman, RODOLFO CADAMPOG, SR.; and 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 squatters in their own country, *petitioners, versus* **THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) AND THE DEPARTMENT OF AGRARIAN REFORM (DAR),** *respondents.*

Promulgated:

September 15, 2020

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CONCURRING OPINION

CAGUIOA, *J.*:

The *ponencia* dismisses the present Petition for *Certiorari* and affirms the constitutionality of Section 3(a) of Presidential Decree No. (PD) 705,[1] otherwise known as the Forestry Reform Code of the Philippines.

I concur.

I submit this Concurring Opinion principally to express my views with respect to the Regalian doctrine and clarify the parameters of the presumption of State ownership.

The Regalian doctrine is the foundation of the State's property regime.

In his Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*,[2] Justice Reynato S. Puno explained the origins of the Regalian doctrine and traced its history back to the Laws of the Indies, thus:

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1 REVISING PRESIDENTIAL DECREE NO. 389, OTHERWISE KNOWN AS THE FORESTRY REFORM CODE OF THE PHILIPPINES, May 19, 1975.

2 G.R. No. 135385, December 6, 2000, 347 SCRA 128, 162-242.

The capacity of the State to own or acquire property is the state's power of *dominium*. This was the foundation for the early Spanish decrees embracing the feudal theory of *jura regalia*. The "Regalian [d]octrine" or *jura regalia* is a Western legal concept that *was first introduced by the Spaniards into the country through the Laws of the Indies and the Royal Cedulas*. The Laws of the Indies, *i.e.*, more specifically, *Law 14, Title 12, Book 4 of the Novisima Recopilacion de Leyes de las Indias*, set the policy of the Spanish Crown with respect to the Philippine Islands in the following manner:

> "We, having acquired full sovereignty over the Indies, and all lands, territories, and possessions not heretofore ceded away by our royal predecessors, or by us, or in our name, still pertaining to the royal crown and patrimony, it is our will that all lands which are held without proper and true deeds of grant be restored to us as they belong to us, in order that after reserving before all what to us or to our viceroys, audiencias, and governors may seem necessary for public squares, ways, pastures, and commons in those places which are peopled, taking into consideration not only their present condition, but also their future and their probable increase, and after distributing to the natives what may be necessary for tillage and pasturage, confirming them in what they now have and giving them more if necessary, all the rest of said lands may remain free and unencumbered for us to dispose of as we may wish.
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> We therefore order and command that all viceroys and presidents of pretorial courts designate at such time as shall to them seem most expedient, a suitable period within which all possessors of tracts, farms, plantations, and estates shall exhibit to them and to the court officers appointed by them for this purpose, their title deeds thereto. And those who are in possession by virtue of proper deeds and receipts, or by virtue of just prescriptive right shall be protected, and all the rest shall be restored to us to be disposed of at our will."

The Philippines passed to Spain by virtue of "discovery" and conquest. Consequently, all lands became the exclusive patrimony and dominion of the Spanish Crown. The Spanish Government took charge of distributing the lands by issuing royal grants and concessions to Spaniards, both military and civilian. Private land titles could only be acquired from the government either by purchase or by the various modes of land grant from the Crown.

The Laws of the Indies were followed by the *Ley Hipotecaria*, or the *Mortgage Law of 1893*. The Spanish Mortgage Law provided for the systematic registration of titles and deeds as well as possessory claims. The law sought to register and tax lands pursuant to the Royal Decree of 1880. The Royal Decree of 1894, or the "Maura Law," was partly an amendment of the Mortgage Law as well as the Laws of the Indies, as already amended by previous orders and decrees. This was the last Spanish land law promulgated in the Philippines. It required the "adjustment" or registration of all agricultural lands, otherwise the lands shall revert to the State.

> Four years later, by the *Treaty of Paris of December 10, 1898*, Spain ceded to the government of the United States all of its rights, interests and claims over the national territory of the Philippine Islands. In 1903, the United States colonial government, through the Philippine Commission, passed Act No. 926, the first Public Land Act.[3]

That the Regalian doctrine remained in force even after the Philippines was ceded to the United States appears to have been confirmed by the Court *En Banc* in the 1904 case of *Valenton v. Murciano*,[4] through the following observations:

> The policy pursued by the Spanish Government from the earliest times, requiring settlers on the public lands to obtain deeds therefor from the State, has been continued by the American Government in Act No. 926, which takes effect when approved by Congress. x x x[5]

Subsequently, the Regalian doctrine was adopted under the 1935 Constitution, particularly, in Section 1, Article XIII:

> SECTION 1. **All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy and other natural resources of the Philippines belong to the State**, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines or to corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another 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 limit of the grant. (Emphasis supplied)

Under the 1973 Constitution, the Regalian doctrine was set forth in clearer terms, hence:

> 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

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3 Id. at 165-167.

4 3 Phil. 537 (1904) [En Banc, per J. Willard].

5 Id. at 553.

> than the development of water power, in which cases, beneficial use may be the measure and the limit of the grant.[6] (Emphasis supplied)

At present, the Regalian doctrine remains enshrined in Section 2, Article XII of the 1987 Constitution, which reads:

> 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. (Emphasis supplied)

In addition, the 1987 Constitution further states that only lands classified as agricultural shall be alienable, and thus, susceptible of private ownership.[7]

Based on the foregoing, I submit that the Regalian doctrine remains the basic foundation of the State's property regime under the present Constitution.

The Regalian doctrine espouses that all lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership of land. Accordingly, all lands not otherwise appearing to be clearly within private ownership are *presumed* to belong to the State. Unless land is shown to have been reclassified as agricultural (and thus, alienable), such land remains part of the inalienable land of the public domain.[8]

As pointedly discussed by the *ponencia,* an exception to the general presumption that "all lands are part of public domain" had been crafted by

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6 1973 CONSTITUTION, Art. XIV.

7 Article XII, Sec. 3 states:

> SECTION 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof, by purchase, homestead, or grant.

8 *Zarate v. Director of Lands*, G.R. No. 131501, July 14 2004, 434 SCRA 322, 331 [Second Division, per J. Callejo, Sr.].

the United States Supreme Court (U.S. Supreme Court) in the 1909 case of *Cariño v. Insular Government*[9] (*Cariño*).

Cariño involved a claim of ownership over land occupied by the petitioner therein and his ancestors since time immemorial, that is, before the Spanish Conquest. Taking this peculiar circumstance into account, the U.S. Supreme Court held:

> 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 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.
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> x x x x
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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."[10] (Emphasis supplied)

I share the *ponente's* view that *Cariño* merely carved out an exception thereto in recognition of native titles which vested prior to the Spanish Conquest. As lands subject of these native titles have been held since time immemorial, they are deemed **excluded** from the mass of public domain placed under the scope of the Regalian doctrine. That is the limited context of *Cariño's* ruling that the presumption of private ownership of lands may be applied.

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9 212 U.S. 449 (1909). The case was brought from the Philippine Supreme Court to the U.S. Supreme Court via writ of error.

10 *Cariño v. Insular Government*, id. at 458-460.

Section 3(a) of PD 705 is consistent with the Regalian doctrine.

Proceeding now to the issue at hand, the petitioners herein assail the constitutionality of Section 3(a) of PD 705 which defines public forest. It states:

> SECTION 3. *Definitions.* –
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> 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. (Emphasis supplied)

According to the petitioners, the automatic treatment of unclassified lands as forest lands is unconstitutional as it operates to deprive those who have long been in possession of their vested right of ownership over said unclassified lands.[11]

The petitioners anchor their position on two premises — *first,* that unclassified lands of the public domain are *presumed* to be agricultural land, and thus, alienable,[12] and *second,* that Section 3(a) operates as a wholesale classification of *alienable* unclassified land to *inalienable* forest land.[13]

Both premises are incorrect.

I. *Unclassified lands of the public domain are inalienable*

As stated, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. Unless land is shown to have been reclassified as alienable agricultural land, such land remains, and should be treated as, inalienable land of the public domain.

I am aware of the Court's ruling in *Ibañez de Aldecoa v. Insular Government*[14] (*De Aldecoa*) to the effect that "with the exception of those comprised within the mineral and timber zone, all lands owned by the State or by the sovereign nation are public in character, and *per se* alienable x x x, provided they are not destined to the use of the public in general or reserved by the Government in accordance with law."[15] I am likewise aware of the Court's pronouncements in *Ramos v. Director of Lands*[16] (*Ramos*) and *J.H. Ankron v. Government of the Philippine Islands*[17] (*Ankron*) which are now

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11 *Ponencia*, p. 3.
12 See Petition, *rollo,* p. 8.
13 See id. at 9.
14 13 Phil. 159 (1909) [En Banc, per J. Torres].
15 Id. at 166.
16 39 Phil. 175 (1918) [En Banc, per J. Malcolm].
17 40 Phil. 10 (1919) [First Division, per J. Johnson].

relied upon by the petitioners as basis to argue that lands should be presumed agricultural in nature, in the absence of contrary proof.

I submit, however, that these rulings should be understood in their proper context.

De Aldecoa, Ramos and *Ankron* involved actions for registration of title decided under the regime of the Philippine Bill of 1902[18].

Under the Philippine Bill of 1902, the Government of the Philippine Islands had been authorized to classify land into three categories — timber, mineral, and agricultural, thus:

> 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. (Emphasis supplied)

Pursuant to the mandate in Section 13, the Philippine Commission enacted Act No. 926[19] (Act 926) otherwise known as the first Public Land Act.

While Act 926 prescribed the rules and regulations for the lease, sale, and other disposition of alienable public lands, it failed to grant the power to classify lands to any central authority. In the absence of such specific grant of power, courts were then confronted with the task of determining land

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[18] ACT OF CONGRESS OF JULY FIRST, NINETEEN HUNDRED AND TWO, "THE PHILIPPINE BILL" AN ACT TEMPORARILY TO PROVIDE FOR THE ADMINISTRATION OF THE AFFAIRS OF CIVIL GOVERNMENT IN THE PHILIPPINE ISLANDS, AND FOR OTHER PURPOSES, July 1, 1902.

[19] AN ACT PRESCRIBING RULES AND REGULATIONS GOVERNING THE HOMESTEADING, SELLING, AND LEASING OF PORTIONS OF THE PUBLIC DOMAIN OF THE PHILIPPINE ISLANDS, PRESCRIBING TERMS AND CONDITIONS TO ENABLE PERSONS TO PERFECT THEIR TITLES TO PUBLIC LANDS IN SAID ISLANDS, PROVIDING FOR THE ISSUANCE OF PATENTS WITHOUT COMPENSATION TO CERTAIN NATIVE SETTLERS UPON THE PUBLIC LANDS, PROVIDING FOR THE ESTABLISHMENT OF TOWN SITES AND SALE OF LOTS THEREIN, AND PROVIDING FOR THE DETERMINATION BY THE PHILIPPINES COURT OF LAND REGISTRATION OF ALL PROCEEDINGS FOR COMPLETION OF IMPERFECT TITLES AND FOR THE CANCELLATION OR CONFIRMATION OF SPANISH CONCESSIONS AND GRANTS IN SAID ISLANDS, AS AUTHORIZED BY SECTIONS THIRTEEN, FOURTEEN, FIFTEEN AND SIXTY-TWO OF 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," October 7, 1903.

classification in justiciable cases on an *ad hoc* basis, that is, depending on the evidence presented in each particular case.

The Court's ruling in *Secretary of the Department of Environment and Natural Resources v. Yap*[20] (*Yap*) is instructive.

In *Yap,* Proclamation No. (Proclamation) 1801[21] issued by President Ferdinand Marcos (President Marcos) and its implementing circular Philippine Tourism Authority (PTA) Circular No. 3-82 were called into question.

Under Proclamation 1801, President Marcos declared certain islands, coves, and peninsulas as tourist zones and marine reserves and placed them under the administration of the PTA. Boracay Island was included among the islands declared as tourist zones.

Land claimants in *Yap* argued that Proclamation 1801 and PTA Circular No. 3-82 raised doubts on their ability to secure Torrens titles over land which they have been occupying since June 12, 1945 or earlier. Thus, they filed a Petition for Declaratory Relief with the RTC of Kalibo, Aklan.

The Republic, through the Office of the Solicitor General (OSG), opposed the Petition for Declaratory Relief, primarily arguing that Boracay Island constitutes unclassified land which, in turn, is inalienable. Since Boracay Island has not been classified as alienable and disposable land, whatever form of possession which the claimants had, could not ripen into ownership.

Acting on the claimants' Petition for Declaratory Relief, the RTC held that Proclamation 1801 and PTA Circular No. 3-82 "pose no legal obstacle to the petitioners and those similarly situated to acquire title to their lands in Boracay, in accordance with the applicable laws and in the manner prescribed therein."[22] The CA affirmed.

The Republic later elevated the case to the Court *via* Petition for Review which was docketed as G.R. No. 167707. G.R. No. 167707 was later consolidated with an original petition for prohibition, mandamus, and nullification of Proclamation 1064[23] docketed as G.R. No. 173775 filed by another set of land claimants.

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20 G.R. Nos. 167707 and 173775, October 8, 2002, 568 SCRA 164 [En Banc, per J. R.T. Reyes].

21 DECLARING CERTAIN ISLANDS, COVES AND PENINSULAS IN THE PHILIPPINES AS TOURIST ZONES AND MARINE RESERVE UNDER THE ADMINISTRATION AND CONTROL OF THE PHILIPPINE TOURISM AUTHORITY, November 10, 1978.

22 *Secretary of the Department of Environment and Natural Resources v. Yap*, supra note 20, at 178.

23 CLASSIFYING BORACAY ISLAND SITUATED IN THE MUNICIPALITY OF MALAY, PROVINCE OF AKLAN INTO FORESTLAND (PROTECTION PURPOSES) AND INTO AGRICULTURAL LAND (ALIENABLE AND DISPOSABLE) PURSUANT TO PRESIDENTIAL DECREE NO. 705 (REVISED FORESTRY REFORM CODE OF THE PHILIPPINES), May 22, 2006.

Under Proclamation 1064, President Gloria Macapagal-Arroyo classified Boracay Island into 400 hectares of reserved forest land and 628.96 hectares of agricultural land. The petitioners in G.R. No. 173775 assailed the validity of Proclamation 1064 as it allegedly infringed on their vested rights over portions of Boracay Island. The Republic, again through the OSG, countered that Boracay Island is unclassified land. Thus, the portions of the island which remain inalienable under Proclamation 1064 could not be subject of judicial confirmation of imperfect title.

The land claimants in G.R. Nos. 167707 and 173775 argued, among others, that Boracay Island constitute agricultural land pursuant to *Ankron* and *De Aldecoa*. The Court **rejected** this assertion in this wise:

> *Ankron* and *De Aldecoa* were decided at a time when the President of the Philippines had no power to classify lands of the public domain into mineral, timber, and agricultural. **At that time, the courts were free to make corresponding classifications in justiciable cases, or were vested with implicit power to do so, depending upon the preponderance of the evidence.** This was the Court's ruling in *Heirs of the Late Spouses Pedro S. Palanca* and *Soterranea Rafols Vda. De Palanca v. Republic*, in which it stated, through Justice Adolfo Azcuna, *viz.*:
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> > "x x x Petitioners furthermore insist that a particular land need not be formally released by an act of the Executive before it can be deemed open to private ownership, citing the cases of *Ramos v. Director of Lands* and *Ankron v. Government of the Philippine Islands*.
> >
> > x x x x
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> > Petitioner's reliance upon *Ramos v. Director of Lands* and *Ankron v. Government* is misplaced. These cases were decided under the Philippine Bill of 1902 and the first Public Land Act No. 926 enacted by the Philippine Commission on October 7, 1926, under which there was no legal provision vesting in the Chief Executive or President of the Philippines the power to classify lands of the public domain into mineral, timber and agricultural so that the courts then were free to make corresponding classifications in justiciable cases, or were vested with implicit power to do so, depending upon the preponderance of the evidence."
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> **To aid the courts in resolving land registration cases under Act No. 926, it was then necessary to devise a presumption on land classification. Thus evolved the dictum in *Ankron* 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."**
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> **But We cannot unduly expand the presumption in *Ankron* and *De Aldecoa* to an argument that all lands of the public domain had been automatically reclassified as disposable and alienable agricultural lands. By no stretch of imagination did the presumption convert all lands of the public domain into agricultural lands.**

> **If We accept the position of private claimants, the Philippine Bill of 1902 and Act No. 926 would have automatically made all lands in the Philippines, except those already classified as timber or mineral land, alienable and disposable lands. That would take these lands out of State ownership and worse, would be utterly inconsistent with and totally repugnant to the long-entrenched Regalian doctrine.**
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> The presumption in *Ankron* and *De Aldecoa* attaches only to land registration cases brought under the provisions of Act No. 926, or more specifically those cases dealing with judicial and administrative confirmation of imperfect titles. The presumption applies to an applicant for judicial or administrative conformation of imperfect title under Act No. 926. It certainly cannot apply to landowners, such as private claimants or their predecessors-in-interest, who failed to avail themselves of the benefits of Act No. 926. As to them, their land remained unclassified and, by virtue of the Regalian doctrine, continued to be owned by the State.
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> In any case, the assumption in *Ankron* and *De Aldecoa* was not absolute. Land classification was, in the end, dependent on proof. If there was proof that the land was better suited for non-agricultural uses, the courts could adjudge it as a mineral or timber land despite the presumption. x x x
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> x x x x
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> **Since 1919, courts were no longer free to determine the classification of lands from the facts of each case, except those that have already become private lands**. Act No. 2874, promulgated in 1919 and reproduced in Section 6 of CA No. 141, gave the Executive Department, through the President, the exclusive prerogative to classify or reclassify public lands into alienable or disposable, mineral or forest. Since then, courts no longer had the authority, whether express or implied, to determine the classification of lands of the public domain.[24] (Emphasis supplied)

Verily, the presumption espoused in *De Aldecoa, Ramos*, and *Ankron* was an evidentiary tool devised in the limited context of registration cases brought under the provisions of Act 926. **Such presumption no longer applies in the current statutory regime**.

II. *Owing to the Regalian doctrine, unclassified lands of the public domain necessarily remain inalienable until classified as agricultural land*

At present, Section 3, Article XII of the 1987 Constitution classifies lands of the public domain into four (4) categories — agricultural lands, forest or timber lands, mineral lands, and national parks, to wit:

> SECTION 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. **Alienable lands of**

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[24] *Secretary of the Department of Environment and Natural Resources v. Yap*, supra note 20, at 194-197.

> **the public domain shall be limited to agricultural lands.** x x x (Emphasis supplied)

Section 3 mandates that only lands classified as agricultural may be declared alienable, and thus susceptible of private ownership. Thus, all lands which have not been classified as such necessarily remain inalienable.

As pointedly discussed by the *ponencia,* the fact that unclassified lands remain inalienable until released and declared open to disposition has been confirmed by the Court *En Banc* in *Yap*, thus:

> Except for lands already covered by existing titles, Boracay was an unclassified land of the public domain prior to [Proclamation 1064]. Such unclassified lands are considered public forest under [PD 705]. The DENR and the National Mapping and Resource Information Authority certify that Boracay Island is an unclassified land of the public domain.
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> [PD 705] issued by President Marcos categorized all unclassified lands of the public domain as public forest. Section 3(a) of [PD 705] defines a public forest as "a 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 purpose and which are not". **Applying [PD 705], all unclassified lands, including those in Boracay Island, are *ipso facto* considered public forests. [PD 705], however, respects titles already existing prior to its effectivity**.
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> The Court notes that the classification of Boracay as a forest land under [PD 705] may seem to be out of touch with the present realities in the island. Boracay, no doubt, has been partly stripped of its forest cover to pave the way for commercial developments. As a premier tourist destination for local and foreign tourists, Boracay appears more of a commercial island resort, rather than a forest land.
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> Nevertheless, that the occupants of Boracay have built multi-million peso beach resorts on the island; that the island has already been stripped of its forest cover; or that the implementation of [Proclamation 1064] will destroy the island's tourism industry, do not negate its character as public forest.
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> Forests, in the context of both the Public Land Act and the Constitution classifying lands of the public domain into "agricultural, forest or timber, mineral lands, and national parks," do not necessarily refer to large tracts of wooded land or expanses covered by dense growths of trees and underbrushes. The discussion in *Heirs of Amunategui v. Director of Forestry* is particularly instructive:
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> > "A forested area classified as forest land of the public domain does not lose such classification simply because loggers or settlers may have stripped it of its forest cover. Parcels of land classified as forest land may actually be covered with grass or planted to crops by kaingin cultivators or other farmers. "Forest lands" do not have to be on mountains or in out of the way places. Swampy areas covered by mangrove trees, nipa palms, and other trees growing in brackish or sea water may also be classified as

> forest land. The classification is descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like. Unless and until the land classified as "forest" is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain, the rules on confirmation of imperfect title do not apply." x x x

There is a big difference between "forest" as defined in a dictionary and "forest or timber land" as a classification of lands of the public domain as appearing in our statutes. One is descriptive of what appears on the land while the other is a legal status, a classification for legal purposes. At any rate, the Court is tasked to determine the legal status of Boracay Island, and not look into its physical layout. Hence, even if its forest cover has been replaced by beach resorts, restaurants and other commercial establishments, it has not been automatically converted from public forest to alienable agricultural land.

Private claimants cannot rely on [Proclamation 1801] as basis for judicial confirmation of imperfect title. The proclamation did not convert Boracay into an agricultural land. However, private claimants argue that [Proclamation 1801] issued by then President Marcos in 1978 entitles them to judicial confirmation of imperfect title. The Proclamation classified Boracay, among other islands, as a tourist zone. Private claimants assert that, as a tourist spot, the island is susceptible of private ownership.

[Proclamation 1801] or PTA Circular No. 3-82 did not convert the whole of Boracay into an agricultural land. There is nothing in the law or the Circular which made Boracay Island an agricultural land. The reference in Circular No. 3-82 to "private lands" and "areas declared as alienable and disposable" does not by itself classify the entire island as agricultural. Notably, Circular No. 3-82 makes reference not only to private lands and areas but also to public forested lands. x x x

x x x x

[Proclamation 1801] cannot be deemed the positive act needed to classify Boracay Island as alienable and disposable land. If President Marcos intended to classify the island as alienable and disposable or forest, or both, he would have identified the specific limits of each, as President Arroyo did in [Proclamation. 1064]. This was not done in [Proclamation 1801].

x x x x

It was [Proclamation 1064] of 2006 which positively declared part of Boracay as alienable and opened the same to private ownership. Sections 6 and 7 of CA No. 141 provide that it is only the President, upon the recommendation of the proper department head, who has the authority to classify the lands of the public domain into alienable or disposable, timber and mineral lands.

In issuing [Proclamation 1064], President Gloria Macapagal-Arroyo merely exercised the authority granted to her to classify lands of the public domain, presumably subject to existing vested rights. **Classification of public lands is the exclusive prerogative of the**

> **Executive Department, through the Office of the President. Courts have no authority to do so. Absent such classification, the land remains unclassified until released and rendered open to disposition.**[25]
> (Emphasis supplied; emphasis in the original omitted)

Contrary to the petitioners' view, Section 3(a) does *not* operate as a wholesale classification of alienable land to inalienable land, for lands which are unclassified remain inalienable until released and declared by the Executive as agricultural land, the latter being the sole classification of land which may be subject to alienation and disposition.

Section 15 of PD 705 was not assailed herein.

My esteemed colleague Justice Leonen is of the view that Section 15 of PD 705 violates the due process clause enshrined under Section 1, Article III of the 1987 Constitution.[26]

Section 15 of PD 705 states:

> 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, 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.

Justice Leonen adds that the "sudden shift in land policy meant that a sole criterion is now used to declare a land as a forest, regardless of its nature"[27] and has in fact "led to unrealistic pronouncements declaring lands as forestal even if other biophysical factors show otherwise."[28]

I note, however, that the Petition solely assails the constitutionality of Section 3(a) of PD 705.

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25 Id. at 200-205.
26 J. Leonen, Concurring Opinion, p. 19.
27 Id.
28 Id.

Section 3(a) merely defines the term "public forest" as "the mass of lands of the public domain which has not been the subject of the present system of classification[.]" As explained, Section 3(a) does not have the effect of changing the nature of the lands under its scope, as both unclassified and forest lands are similarly inalienable. On the other hand, Section 15 mandates the reversion of alienable and disposable land 18% in slope or over to the classification of forest lands, subject to existing rights. To my mind Section 3(a) and Section 15 cover entirely different subject matters.

Thus, considering that the validity of Section 15 of PD 705 (including the 18% slope criterion set forth thereunder) is not assailed by the petitioners herein, I submit that any pronouncement on these matters must await the filing of the proper case which directly puts the validity of Section 15 in issue. Any opinion thus expressed regarding Section 15 would be completely irrelevant and *obiter*.

Based on these premises, I vote to **DISMISS** the Petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court