G.R. No. 247816 — Spouses DIONISIO DUADUA SR. and CONSOLATRIZ DE PERALTA DUADUA, substituted by their heirs GLICERIA DUADUA TOMBOC, DIONISIO P. DUADUA, JR., BIENVENIDO P. DUADUA, SAMUEL P. DUADUA, and MOISES P. DUADUA, *petitioners, versus* **R.T. DINO DEVELOPMENT CORPORATION represented by its President ROLANDO T. DINO, Spouses ESTEBAN FERNANDEZ, JR. and ROSE FERNANDEZ, and the DEPARMTENT OF PUBLIC WORKS AND HIGHWAYS, represented by ENGR. TOMAS D. RODRIGUEZ and the Officer-in-Charge-District Engineer of Sultan Kudarat Engineering District, Isulan, Sultan Kudarat,** *respondents.*

Promulgated: JUL 15 2020

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CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* in granting the petition, and upholding the petitioners' right to repurchase the land first granted to them *via* a homestead patent, with such right to repurchase being anchored on Section 119[1] of Commonwealth Act No. 141 (C.A. 141).[2]

Rightly, since petitioners herein sold the subject parcel of land to respondent R.T. Dino Development Corporation in 1996, and thereafter expressed their desire to repurchase the same a little over three years after, the petitioners have complied with the sole condition under Section 119 that said repurchase be made within five years from date of conveyance.

However, I wish to broaden the context of the present petition by situating the same in the larger conversation that involves the recent pivotal and retroactive repeal by Republic Act No. 11231 (R.A. 11231), or the "Agricultural Free Patent Reform Act of 2019" of the former restrictions put in place by C.A. 141. R.A. 11231 expressly lifted all encumbrances and conditions from conveyance of homestead property, including the general right to repurchase as previously imposed under C.A. 141. The right to repurchase herein sought to be exercised by the petitioners is, therefore, but a vestige of the homestead structure that has undoubtedly come undone.

Most on point are Sections 3 and 4 of R.A. 11231 which provide:

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[1] Section 119, C.A. 141 states:

SECTION 119. Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance.

[2] Otherwise known as THE PUBLIC LAND ACT OF 1936.

> **Section 3.** Agricultural public lands alienated or disposed in favor of qualified public land applicants under Section 44 of Commonwealth Act No. 141, as amended, **shall not be subject to restrictions imposed under Sections 118, 119 and 121 thereof regarding acquisitions, encumbrances, conveyances, transfers, or dispositions. Agricultural free patent shall now be considered as title in fee simple and shall not be subject to any restriction on encumbrance or alienation.** (Emphasis supplied.)
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> **Section 4.** This Act shall have retroactive effect and any restriction regarding acquisitions, encumbrances, conveyances, transfers, or dispositions imposed on agricultural free patents issued under Section 44 of Commonwealth Act No. 141, as amended, before the effectivity of this Act shall be removed and are hereby immediately lifted: ***Provided,* That nothing in this Act shall affect the right of redemption under Section 119 of Commonwealth Act No. 141, as amended, for transactions made in good faith prior to the effectivity of this Act.** (Emphasis supplied.)

R.A. 11231 lifted the prohibition against the encumbrance or alienation of lands acquired under free patent, except if the same is in favor of the government or any of its branches, within five years from the issuance of the patent or grant.[3] It also removed the condition for repurchase, where the applicant, his widow, or legal heirs can repurchase a land acquired under the free patent provisions within five years from the date of transfer or sale.[4] Finally, it did away with the limitation that except for solely commercial, industrial, educational, religious, charitable, or right of way purposes, and upon approval of the patentee and the Secretary of Department of Environment and Natural Resources, corporations, associations, or partnerships are forbidden from acquiring any property right, title or interest on free patent.

As it stands, the discarding of these circumscriptions left the agricultural free patent a title in fee simple, free of any restriction on its encumbrance or alienation. Further, since the repeal also applies retroactively, any prior defective disposition not included under the right of redemption in Section 119 is effectively cured, and any restrictions on the acquisitions, encumbrances, or dispositions concerning agricultural free patents issued prior to the enactment of R.A. 11231 are deemed lifted.

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[3] Section 118, C.A. 141 provides:

SECTION 118. Except in favor of the Government or any of its branches, units, or institutions, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Commerce, which approval shall not be denied except on constitutional and legal grounds.

[4] Supra note 1.

Prospectively, therefore, for *all* instances, from the date of promulgation of R.A. 11231, all lands covered by homestead patents are free from any and all encumbrances and conditions.

This easing of restriction, among others, was predicted to have a crucial impact on the viability and tradability of the country's farm lands, since the lifted restrictions cover an estimated 2.6 million parcels or 10% of all titled parcels in the Philippines.[5] This is also seen to invite anew potential land investments in the largely agricultural regions, and jumpstart income productivity of rural lands.[6]

On this score, however, it must be said that this repeal, although seen on the one hand as an advantageous liberalization for patentees in that they are now able to trade or sell their lands without the disincentive of the C.A. 141 restrictions, this is essentially an unmistakable unravelling and abandonment of the underlying safeguards of homesteads, and a ceding of any and all securities previously afforded to small farm owners who, otherwise and as in now the case, left vulnerable once more to the prospect of landlessness.

To recall, the Court has not been remiss in making salient the animating principle for homestead grants under C.A. 141, chief of which is the State's interest to ensure that underprivileged patentees are not easily divested of ownership over the lands they cultivated, and that they are provided the legal scaffolding to maintain financial independence in the face of shifting economic tides. In the case of *Heirs of Bajenting v. Bañez*:[7]

> As elucidated by this Court, the object of the provisions of Act 141, as amended, granting rights and privileges to patentees or homesteaders is to provide a house for each citizen where his family may settle and live beyond the reach of financial misfortune and to inculcate in the individuals the feelings of independence which are essential to the maintenance of free institution. The State is called upon to ensure that the citizen shall not be divested of needs for support, and reclined to pauperism. The Court, likewise, emphasized that the purpose of such law is conservation of a family home in keeping with the policy of the State to foster families as the factors of society, and thus promote public welfare. The sentiment of patriotism and independence, the spirit of citizenship, the feeling of interest in public affairs, are cultivated and fostered more readily when the citizen lives permanently in his own house with a sense of its protection and durability. **It is intended to promote the spread of small land ownership and the preservation of public land grants in the names of the underprivileged for whose benefits they are specially intended and whose welfare is a speeial concern of the State.** The law is intended to

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5 Mari Chrys Pablo, *Making Agricultural Land More Bankable and Tradable*, The Asia Foundation, Coalitions for Change (CfC) Reform Story No. 13, citing Department of Environment and Natural Resources' estimate data (1986 to 2017); available at https://asiafoundation.org/wpcontent/uploads/2020/02/Philippines_CFC Making-Agricultural-Land-More-Bankable-and-Tradeable.pdf

6 Id.

7 G.R. No. 166190, September 20, 2006, 502 SCRA 531.

> commence ownership of lands acquired as homestead by the patentee or homesteader or his heirs.[8]

From the initial point of granting the homestead, the intent of preserving the patentee's ownership of the same is provided in no uncertain terms. Section 118 prohibits the sale or encumbrance of the homestead within five years from the issuance of the patent, unless in favor of the Government, or the offering of the same homestead for the satisfaction of any debt within the same period. The Court has steadily held that this prohibition is mandatory, and any alienation in violation thereof is considered *void ab initio*[9] as was pronounced in the case of *Arsenal v. Intermediate Appellate Court*, to wit:

> The above provisions of law are clear and explicit. A contract which purports of alienate, transfer, convey or encumber any homestead within the prohibitory period of five years from the date of the issuance of the patent is void from its execution. In a number of cases, this Court has held that such provision is mandatory.[10]

The enforcement of this proscription is so strict, in fact, that any such alienation in favor of even the homesteader's own descendant is void, as in the case of *Gayapanao v. Intermediate Appellate Court.*[11] Here, the Court cautioned against the dangers of possible circumventions of this five-year ban:

> It is dangerous precedent to allow the sale of a homestead during the five-year prohibition to anyone, even to the homesteader's own son or daughter. As aptly put by the petitioners, a clever homesteader who wants to circumvent the ban may simply sell the lot to his descendant and the latter after registering the same in his name would sell it to a third person. This way, public policy would not be subserved.
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> x x x To hold valid the sale at bar would be to throw the door open to schemes and subterfuges which would defeat the law prohibiting the alienation of homestead within five (5) years from the issuance of the patent.[12]

More specifically with respect to the patentee's right to restore himself into ownership of the homestead, this Court explained in *Simeon v. Peña*[13] that C.A. 141 was configured in such a way that the homesteader or patentee gets every chance to preserve for himself and his family the land that the State had gratuitously given to him as a reward for his labor over it, and grant him the financial security in keeping with the noblest of public policies,[14] to wit:

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[8] Id. at 552-553. Emphasis supplied.
[9] *Arsenal v. Intermediate Appellate Court*, G.R. No. L-66696, July 14, 1986, 143 SCRA 40, 54.
[10] Id. at 49, citing *De Los Santos v. Roman Catholic Church of Midsayap*, 94 Phil. 405.
[11] G.R. No. 68109, July 17, 1991, 199 SCRA 309.
[12] Id. at 314.
[13] G.R. No. L-29049, December 29, 1970, 36 SCRA 610.
[14] See also *Heirs of Bajenting v. Bañez*, supra note 7.

> "These homestead laws" x x x were designed to distribute disposable agricultural lots of the State to land-destitute citizens for their home and cultivation [x x x] It [referring to sec. 119] aims to preserve and keep in the family of the homesteader that portion of public land which the State had gratuitously given to him."[15]

The Court has further held that the patentee's right to repurchase is jealously guarded, so that the same may not be waived,[16] and must be upheld even if the land sought to be repurchased has, since the disposition, been reclassified into a commercial zone.[17] The Court likewise held that the five-year period for redemption under Section 119 must prevail over other statutes that provide for a shorter redemption period, in order to favor more opportunities for restoration of the homestead to the patentee after a conveyance.[18] In the 1952 case of *Paras, Sr. v. Court of Appeals*,[19] this Court ruled that, in favor of obtaining a longer period for the patentee to be able to repurchase, the five-year period within which a homesteader or his widow or heirs may repurchase a homestead sold at public auction or foreclosure sale begins not at the date of the sale when merely a certificate is issued by the sheriff or other official, but rather on the day after the expiration of the period of repurchase.[20]

So carefully considered is the consistency of the right to repurchase *vis-à-vis* the underpinning policy of affording landholdings to many small owners that this Court even denied the right to repurchase when the same was motivated by a reason not in keeping with the homestead law policy. The case of *Capistrano v. Limcuando*[21] elucidates:

> However, it is important to stress that the ultimate objective of the law is **"to promote public policy, that is, to provide home and decent living for destitutes, aimed at providing a class of independent small landholders which is the bulwark of peace and order."** Our prevailing jurisprudence requires that the motive of the patentee, his widow, or legal heirs in the exercise of their right to repurchase a land acquired through patent or grant must be consistent with the noble intent of the Public Land Act. We held in a number of cases that the right to repurchase of a patentee should fail if his underlying cause is contrary to everything that the Public Land Act stands for.[22]

To be sure, the five-year ban on alienation admits of a sole exception: the alienation is in favor of the Government or any of its branches, units or institutions. This exception created a mechanism where the State could

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[15] *Simeon v. Peña*, supra note 13 at 618.

[16] See *Rural Bank of Davao City, Inc. v. Court of Appeals*, G.R. No. 83992, January 27, 1993, 217 SCRA 554, 565.

[17] See *Spouses Alcuitas v. Villanueva*, G.R. No. 207964, September 16, 2015, 771 SCRA 1, 10-11.

[18] *Simeon v. Peña*, supra note 14 at 618.

[19] G.R. No. L-4091, May 28, 1952, 91 SCRA 389.

[20] Id. at 394-395. See also *Belisario v. Intermediate Appellate Court*, G.R. No. 73503, August 30, 1988, 165 SCRA 101 and *Philippine National Bank v. De Los Reyes*, G.R. Nos. L-46898-99, November 28, 1989, 179 SCRA 619.

[21] G.R. No. 152413, February 13, 2009, 579 SCRA 176.

[22] Id. at 188. Emphasis supplied.

recover by sale in its favor lands it had granted as homesteads so that it could turn around and redistribute these repurchased land to other patent applicants, and is rooted in the constitutionally enshrined regalian doctrine, as the Court ratiocinated in *Unciano v. Gorospe*:[23]

> The proscription against the sale or encumbrance of property subject of a pending free patent application is not pointedly found in the aforequoted provision. Rather, it is embodied in the regalian doctrine enshrined in the Constitution, which declares all lands of the public domain as belonging to the State, and are beyond the commerce of man and not susceptible of private appropriation and acquisitive prescription. What divests the Government of its title to the land is the issuance of the patent and its subsequent registration in the Office of the Register of Deeds. Such registration is the operative act that would bind the land and convey its ownership to the applicant. It is then that the land is segregated from the mass of public domain, converting it into private property.[24]

The jurisprudential history has consistently supported the wisdom of the State's foremost concern in preserving lands for agricultural use, and maintaining these lands in the hands of patentees who will develop these lands for agronomic purposes. The arch of interpreting and applying C.A. 141 has always leaned towards the goal of distributing and, in cases, redistributing the homesteads to qualified patent applicants, to serve the ends of uplifting communities through fair land use. The protection by restriction under C.A. 141 gave smaller landholders counterweight against mounting economic burdens under the sheer pressure of which their financial structures tended to collapse. This overarching inclusionary principle sought to ensure that homesteaders previously at the fringes of land ownership are invited into the framework of socio-economic invulnerability that owning and cultivating a piece of land, however modest, secures.

This is the spirit of the C.A. 141 that the sweeping repeal of R.A. 11231 has written off.

The lone exception from the blanket repeal by R.A. 11231 is the one which operates in favor of petitioners' right to repurchase. For although R.A. 11231 provides for retroactive effect to the lifting of restrictions, it nevertheless specially preserved and honored rights of redemption under Section 119 of C.A. 141, under the qualifying clause under Section 4 thereof, and exercised prior to R.A. 11231. As applied to petitioners' case, therefore, since they sought to exercise in good faith their right to repurchase the subject land pursuant to Section 119 in 1999, or nearly two decades prior to the effectivity of R.A. 11231, petitioners, under the qualifying clause of Section 4, R.A. 11231, are not barred from exercising the same.

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[23] G.R. No. 221869, August 14, 2019.
[24] Id.

Still, a more farsighted question needs to be asked, in consideration of all the other patentees who may wish to convey their homesteads in accordance with R.A. 11231. For demonstrably, the protective backbone of C.A. 141 rises and falls on the very proscriptions that R.A. 11231 removed. R.A. 11231 has taken out the safeguards that have been designed to preserve more humble landholders, often debt-strapped farmers, against the persistent hardships of low farm incomes, poor rural development, food insecurity, and abject poverty that strains many vulnerable communities belonging to the country's agricultural sector. Certainly, the professed wisdom of the repeal is to drum up economic stimulus. One must ask, though, in whose favor this new freedom may ultimately play out, and at what cost and for whose expense such liberalization has truly come.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice