EN BANC

G.R. No. 213207 — REPUBLIC OF THE PHILIPPINES, *Petitioner*, **v. PASIG RIZAL CO., INC.,** *Respondent*.

Promulgated:

February 15, 2022

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SEPARATE CONCURRING OPINION

LEONEN, *J.*:

While the *ponencia* has graciously included my observations on the regalian doctrine, allow me to express a few more points on this subject.

The regalian doctrine is a legal fiction devoid of clear constitutional mooring. Our Constitution does not support the presumption that all land is considered public by default because they were passed down from the Spanish Crown to the State. Article XII, Section 2 of the 1987 Constitution limits State ownership only to lands of the public domain:

> 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. [Emphasis supplied]

This is consistent with the 1935[1] and 1973[2] Constitutions which also limited State dominion only over lands within the public domain.

The due process clause likewise protects all types of properties. Article III, Section 1 of the Constitution provides:

> SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

The due process clause does not confine its coverage to properties covered by paper titles, "[v]erily, there could be land, considered as

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1 1935 CONST., art. XII., sec. 1.
2 1973 CONST., art. XIV, sec. 8.

property, where ownership has vested as a result of either possession or prescription, but still, as yet, undocumented."[3]

Furthermore, the regalian doctrine has no historical basis, as even Spain recognized private ownership of land outside of a royal decree, acknowledging that private land ownership can be obtained either through native custom or long-time possession. *Cariño v. Insular Government*[4] stated:

> Prescription is mentioned again in the royal cedula of October 15, 1754, cited in 3 Philippine, 546; "Where such possessors shall not be able to produce title deeds, it shall be sufficient if they shall show that ancient possession, as a valid title by prescription." It may be that this means possession from before 1700; but, at all events, the principle is admitted. As prescription, even against Crown lands, was recognized by the laws of Spain we see no sufficient reason for hesitating to admit that it was recognized in the Philippines in regard to lands over which Spain had only a paper sovereignty.[5]

Associate Justice Oliver Wendell Holmes, Jr. in *Cariño* emphasized that land held under the concept of ownership prior to the Spanish invasion of our shores could not have been part of public land:

> 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.[6] (Emphasis supplied)

Additionally, the regalian doctrine, a feudal theory introduced by the Spaniards, was not adopted during the American colonial period, and the respect of ownership by native custom was the rule in line with the American objective "to do justice to the natives, not to exploit their country for private gain."[7] Again, in *Cariño*:

> 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

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3 J. Leonen, Concurring and Dissenting Opinion in *Heirs of Malabanan v. Republic of the Philippines*, 717 Phil. 141, 206 (2013) [Per J. Bersamin, En Banc].

4 41 Phil. 935 (1909) [J. Holmes, United States Supreme Court] / 212 U.S., 449; 53 L. ed., 594.

5 *Cariño v. Insular Government*, 41 Phil. 935, 942 (1909) [J. Holmes, United States Supreme Court].

6 Id. at 941.

7 Id. at 940.

> 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 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, [it] had lost all rights and was a mere trespasser when the present government seized [the] 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.*[8] (Emphasis supplied)

Hence, the State's "underlying title to all the lands in the country . . . is burdened by the pre-existing legal rights of [indigenous people] who had occupied and used the land prior to [the] birth of the State."[9]

Nonetheless, the right to a native title should not be limited to the members of indigenous cultural communities, as all Filipinos were once natives before we were repeatedly colonized. It bears stressing that *Cariño* did not limit its application to indigenous people, yet it is often misinterpreted to apply only to lands possessed by members of indigenous cultural communities.[10] *Cariño* is not only confined to ancestral land rights but should also equally apply to all people who have possessed land in the concept of owner since time immemorial.[11]

It is indisputable that we are all natives when it comes to ancestral properties.[12] The distinction between "Christians" and "non-Christians" or "civilized" and "uncivilized" was a political device utilized in furtherance of the colonization process. The "willing" natives were herded into *reducciónes* or *pueblos* to "improve their living conditions" and "civilize

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8 Id. at 939.

9 *Sama v. People of the Philippines*, G.R. No. 224469, January 5, 2021, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67108> [Per J. Lazaro-Javier, En Banc].

10 J. Leonen, Concurring and Dissenting Opinion in *Heirs of Malabanan v. Republic of the Philippines*, 717 Phil. 141, 209 (2013) [Per J. Bersamin, En Banc].

11 J. Leonen, Concurring Opinion in *Federation of Coron, Busuanga, Palawan Farmer's Association, Inc. v. Secretary of the Department of Environment and Natural Resources*, G.R. No. 247866 (Resolution), September 15, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66687> [Per C.J. Gesmundo, En Banc].

12 Id.

those backward races[.]"[13] Thus, natives who converted into Christianity and accepted Spanish rule were deemed "civilized," while those who resisted colonization were labeled as "uncivilized." This dichotomy was later embraced by the Americans who lumped the uncolonized groups into the generic term of "non-Christian tribes":

> 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 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.
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> 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, 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."[14]

The Spanish Government made it clear that the distribution of land rights and interests to Spaniards and their loyal subjects should not be at the expense of the "rights and interests of the natives in their holdings."[15] Yet while both Spain and America promoted policies that respected the natives' rights over their land, the reality was that our colonizers eventually triggered their legal disenfranchisement through subsequent laws.

Through the Royal Decree of October 15, 1754, the Spanish Government guaranteed the natives' rights over their lands, with justified long and continuous possession qualifying them for title to their cultivated land. Succeeding royal decrees also emphasized Spain's intention to respect natives and their landholdings.[16] However, the lack of awareness among the natives of Spanish laws due to "[t]he uneven Spanish impact, abused by colonial officials, the absence of effective notice, illiteracy, lack of money to pay for transportation fares an legal prerequisites, *e.g.*, filing fees, attorney's

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13 *Rubi v. Provincial Board of Mindoro*, 39 Phil 660, 674 (1919) [Per J. Malcolm, En Banc].

14 1 OWEN JAMES LYNCH, JR., COLONIAL LEGACIES IN A FRAGILE REPUBLIC: PHILIPPINE LAND LAW AND STATE FORMATION 243–244 (1st ed., 2011).

15 J. Leonen, Concurring Opinion in *Sama v. People of the Philippines*, G.R. No. 224469, January 5, 2021, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67108> [Per J. Lazaro-Javier, En Banc], citing Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 274 (1982).

16 Id.

fees, survey costs"[17] led to the failure of a large number of natives to have their lands registered under the Spanish Mortgage Law.

Even the remedial measure envisioned by the Maura Law, which was supposed to "insure to the natives, in the future, whenever it may be possible, the necessary land for cultivation, in accordance with traditional usages[,]"[18] was ultimately just a scheme to confiscate the natives' landholdings by imposing a deadline for registration. This is clear in Article 4 of the Maura Law, which provides:

> *The title to all agricultural lands which were capable of adjustment under the Royal Decree of 1880, but the adjustment of which has not been sought at the time of promulgation of this Decree . . . will revert to the State.* Any claim to such lands by those who might have applied for adjustment of the same but have not done so at the time of the above-mentioned date, will not avail themselves in any way or at any time.[19] (Emphasis supplied)

The Americans then used the failure to register under the Maura Law as a basis to deny recognition of ancestral property rights.[20]

The malicious imposition of the baseless dichotomy on natives has created widespread injustice not only on our indigenous communities but also to all Filipinos, as we were all natives before we were stamped by our colonizers with their convenient labels.

To bring justice to our people and to right our history, it is time that we reframe our invocation of the regalian doctrine and to stop viewing our lands as bounty bequeathed on us by our colonizers.

Accordingly, I vote to **DENY IN PART** the Petition for Review and to **REMAND** the case to the Court of Appeals for reception of evidence and for the Court of Appeals to thereafter **RESOLVE** the case with dispatch.

MARVIC M.V.F LEONEN
Associate Justice

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17 Owen James Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Sea (1565-1898)*, 63 PHIL. L. J. 82, 107 (1988).

18 Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 275 (1982).

19 As cited in John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose Land, Which Lands*, 42 ATENEO L. J. 159, 174 (1997).

20 J. Leonen, Concurring Opinion in *Sama v. People of the Philippines*, G.R. No. 224469, January 5, 2021, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67108> [Per J. Lazaro-Javier, En Banc].