



MEMORANDUM FOR THE SECRETARY

THROUGH : The Undersecretary
Legal, Administration, Human Resources and Legislative Affairs

FROM : The Assistant Secretary
Legal Affairs

SUBJECT : PROVIDING INFORMATION AND REQUESTING
COMMENTS ON SOME PRONOUNCEMENTS OF THE HIGH
COURT IN THE CASE ENTITLED "*REPUBLIC OF THE
PHILIPPINES V. PASIG RIZAL CO., INC.*," G.R. NO. 213207,
PROMULGATED ON 15 FEBRUARY 2022 THAT HAS
CONSIDERABLE IMPACT ON EXISTING DENR POLICIES

This refers to the case *Republic of the Philippines v. Pasig Rizal Co., Inc.*, which was promulgated on 15 February 2022¹. The copy of the Decision was published in the Supreme Court website and duly received by the Office of the Solicitor General, the Republic's counsel, on 30 May 2022.

For easy reference, this Office undertook the liberty of providing a synopsis of the case:

I. Summary of the case

a. Facts:

In 1958, Manuel Dee Ham caused the survey of the Subject Property under Plan Psu-169919. This was approved by the Director of Lands and was declared in Manuel Dee Ham's name for tax purposes. When he died in 1961, the Subject Property was inherited by his surviving wife Esperanza Gerona and their children. They then transferred their beneficial ownership over the subject property to the Dee Ham family corporation, Pasig Rizal Co., Inc. (PRCI).

In 2010, Esperanza filed before the Regional Trial Court (RTC) an application for original registration of title over the subject property for and on behalf of PRCI. She asserted that PRCI is the owner of the Subject Property and all its improvements and that its predecessors in interest have been in open, continuous, exclusive, and notorious possession of the subject property for more than 50 years. She further averred that the subject property has neither been encumbered, nor has it been adversely possessed or claimed by any other party.

On 01 December 2011, the RTC issued a Decision confirming and affirming PRCI's title. It found that PRCI and its predecessors in interest had been in open, continuous,

¹ Copy of the full text of *Republic of the Philippines v. Pasig Rizal Co., Inc.* is attached as ANNEX "A", and may be accessed through the Supreme Court Website: <https://sc.judiciary.gov.ph/27422/>

adverse, and notorious possession in the concept of an owner for the period required by law. The dispositive portion of said Decision states that:

WHEREFORE, affirming the Order of general default heretofore entered, judgment is hereby rendered CONFIRMING and AFFIRMING the title to [PRCI] under the coverage and operation of PD 1529 otherwise known as the Property Registration Decree.

After this decision shall have become final and executor, the Order for the issuance of a Decree of Registration shall accordingly issue.

SO ORDERED.

The Republic, through the Office of the Solicitor General (OSG), assailed the Decision before the Court of Appeals via Rule 41. The CA, pursuant to a Decision dated 25 February 2014, dismissed the appeal and ruled that PRCI sufficiently established that the subject property is alienable and disposable. The dispositive portion of the CA Decision states that:

WHEREFORE, foregoing considered, the [RTC Decision] is AFFIRMED.

SO ORDERED.

In ruling for PRCI, the CA relied on the 2011 Certification issued by the Regional Technical Director of Forest Management Bureau and the 2013 Certification issued by the DENR Regional Executive Director for National Capital Region (RED-NCR) affirming and validating the 2011 Certification. It found that the RED-NCR possessed the authority to issue certifications of land classification status pursuant to DENR Administrative Order (DAO) 2012-09. Hence, the CA concluded that the 2011 and 2013 certifications are competent and convincing proof of the status of the subject property. The CA added that the approval of LC Map 639 had the effect of placing the subject property within the contemplation of private lands subject to prescription.

A Motion for Reconsideration was filed by the Republic, but it was denied. The Republic then filed a Petition for Review on Certiorari before the Supreme Court.

In its Memorandum, PRCI maintains that the classification of the subject property as alienable and disposable means that it has become patrimonial property of the State which may be acquired by prescription. Hence, it has complied with the statutory requirements for judicial confirmation of title.

The Republic argues that the classification of land pertaining to the State under the Civil Code are mutually exclusive. It asserts that lands of public domain become patrimonial only when there is an express government manifestation that the property is no longer intended for public service or development of national wealth. Accordingly, the Republic emphasized that without such express declaration or manifestation, the property, although already classified as alienable and disposable, remains property of the public dominion pursuant to Article 420(2), and thus incapable of acquisition by prescription.

b. Issue:

Whether or not PRCI was able to establish that the subject property forms part of the alienable and disposable agricultural land of the public domain.

c. Ruling:

The Supreme Court denied the Petition filed by the Republic, but remanded the case to the CA for reception of evidence on the subject property's land classification status based on the parameters set forth in Section 7 of RA 11573.

Land classification under the 1987 Constitution and the Civil Code

In so ruling, the Supreme Court (SC) discussed the land classification under 1987 Constitution and the Civil Code. The SC discussed that:

...Section 3, Article XII of the 1987 Constitution classifies lands of the public domain into five (5) (sic) categories - agricultural lands, forest lands, timber lands, mineral lands, and national parks. The provision 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.**

x x x

...Section 3 mandates that only lands classified as agricultural may be declared as *alienable* and susceptible to private ownership.

Regalian doctrine espouses that lands not appearing to be clearly under private ownership are generally presumed to form part of the public domain belonging to the State. An exception to this is native titles which are presumed to have been held even before the Spanish conquest.

The High Court continued by discussing the Civil Code's classification of properties of the state, *viz*:

...The Civil Code classifies property of the State into two (2) categories, thus:

Article 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

Article 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.

Article 422. Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.

In order to determine the scope of the term "lands of the public domain" under the Constitution, the SC consulted the records of the deliberations of the Constitutional Commission. It found that:

...it was initially suggested that the term "lands of the public domain" under then Section 6, Article XII be qualified with the term "agricultural" in order to clarify that only private agricultural lands of the public domain may be acquired and/or held by individuals, corporations, or associations.

This initial suggestion, albeit not pursued, clearly shows that the concept of public domain under the Constitution is indeed broader than the concept of public dominion under the Civil Code.

Hence, while lands of the public domain under the Constitution pertain to all lands owned or held by the State both in its public or private capacity, lands forming part of the public dominion under the Civil Code pertain only to those which are intended for public use, public service, or the development of national wealth, and excludes patrimonial property. **Therefore, property of public dominion and patrimonial property, as defined by the Civil Code, both fall within the scope of public domain contemplated under the 1987 Constitution.**

Patrimonial Property

The SC also discussed the scope and nature of patrimonial properties of the State. The SC observed that:

Being private in nature, patrimonial property is subject to alienation and disposition in the same way as properties owned by private individuals, and may thus be subject of prescription and be the object of ordinary contracts or agreements. Examples of patrimonial property of the State include those acquired by the government in execution sales and tax sales, friar lands, mangrove lands and mangrove swamps. (emphasis supplied)

The SC further classified patrimonial properties of the state into two sub-categories, to wit:

(i) those which are not property of public dominion or imbued with public purpose based in the State's current or intended use, and may thus be classified as patrimonial property "by nature" pursuant to Article 421; and

(ii) those which previously assumed the nature of property of public dominion by virtue of the State's use, but which are no longer being used or intended for said purpose, and may thus be classified as "converted" patrimonial property pursuant to Article 422.

Thus, the SC ruled that:

...the proper interpretation of Article 422 in relation to Articles 420 and 421 is that "converted" patrimonial property can only come from property of public dominion under Article 420. Hence, "converted" property should not be understood as a subset of patrimonial property "by nature" under Article 421.

In essence, the SC ruled that property falling under Article 420 is outside the commerce of man precisely because it is property of public dominion and can neither be alienated nor encumbered. Conversely, those falling under Articles 421 and 422 are necessarily within the commerce of man, as they are not property of public dominion.

The SC continued by drawing a line between specific properties of the State which may either be outside or within the commerce of man. It emphasized that it cannot be both. The SC discussed that:

Prior to the classification of such property to alienable and disposable, agricultural lands (being property of public dominion) are beyond the commerce of man. It is the classification of agricultural lands as alienable and disposable which places them within the commerce of man, and renders them capable of being the subject matter of contracts (such as a patent, the latter being a contract between the State and the grantee). In turn, the power to classify (and re-classify) land is vested solely in the Executive Department. Once a parcel of land forming part of public dominion is classified as alienable and disposable, they become subject to private acquisition but only through the prescribed modes of acquisition of ownership.

Prescription as a mode of acquisition of real property

At the time when PRCI filed its application for registration, ordinary registration proceedings were governed by Section 14 of PD 1529. PRCI did not specify the statutory provision invoked as basis for its application for registration. Nevertheless, PRCI hinged its application on the allegation that it and its predecessors in interest have been in open, continuous, exclusive, and notorious possession of the subject property for more than fifty (50) years, particularly since the year 1956, and not 1945 as prescribed by what was

then Section 14 (1). Thus, it may be deduced that PRCI's application for registration could only fall within the rubric of what was then Section 14 (2) of PD 1529 which covered the registration of land acquired through prescription under existing laws.

The SC discussed that the phrase "existing laws" stated in said Section 14(2) of PD 1529 necessarily includes the Civil Code - the statute which governs the acquisition of lands through prescription. The SC further explained that:

The provisions governing prescription only permit the acquisition of private unregistered lands. As previously noted, lands of private ownership may either be lands owned by private persons, or, pursuant to Article 425 of the Civil Code, patrimonial property of the State, provinces, cities, or municipalities, owned by them in their private capacity.

...excepted from acquisitive prescription are real properties belonging to the State which are not patrimonial in character, as they fall outside the commerce of man.

In *Malabanan*², the requirements for original registration under then Section 14(2) were: (i) a declaration that the land subject of the application is alienable and disposable; (ii) an express government manifestation that said land constitutes patrimonial property, or is "no longer retained" by the State for public use, public service, or the development of national wealth and (iii) proof of possession for the period and in the manner prescribed by the Civil Code for acquisitive prescription, reckoned from the moment the property subject of the application becomes patrimonial property of the State.

The second *Malabanan* requirement, that is, the express government manifestation that the land constitutes patrimonial property, was anchored on the premises that "all lands owned by the State, although declared alienable or disposable, remain as property of public dominion and ought to be used only by the Government". However, this premise was not meant to be adopted in absolute terms.

The operative act which converts property of public dominion to patrimonial property is its classification as alienable and disposable land of the public domain, as this classification precisely serves as the manifestation of the State's lack of intent to retain the same for some public use or purpose.

Consequently, those who seek registration on the basis of title over land forming part of the public domain must overcome the presumption of State ownership. The applicant must establish that the land subject of the application is alienable or disposable and thus susceptible of acquisition and subsequent registration. However, once the presumption of State ownership is discharged by the applicant, the burden to refute the applicant's claim that the land in question is patrimonial in nature necessarily falls on the State.

Where the property subject of the application had not been utilized by the State, and the latter had not manifested any intention to utilize the same, proof of conversion into patrimonial property requires the establishment of a negative fact- the lack of intent on the part of the State to retain the property and utilize the same for some public purpose. It is clear from the language of the law that:

² *Heirs of Mario Malabanan v. Republic*, G.R. No. 179987, September 3, 2013, 704 SCRA 561

Article 420. The following things are property of public dominion:

x x x

(2) Those which belong to the State, without being for public use, **and are intended** for some public service or for the development of the national wealth. (Emphasis and underscoring supplied)

The Supreme Court categorically stated that **"In other words, placing on the applicant the burden to prove the State's lack of intent to retain the property would be unreasonable, and totally beyond the text and purpose of PD 1529."** Further, this renders illusory the legal provisions in the Civil Code for the acquisition of the property. After all, it is the State which has the capacity to prove its own intent to use such property for some public purpose in the absence of any overt manifestation thereof through prior use, occupation, or express declaration."³

The Court clarified, however, and cleared that "where the property subject of the application **had been previously utilized by the State for some public purpose, proof of conversion requires the establishment of a positive fact-** the abandonment by the State of its use and the consequent withdrawal of the property from the public dominion. To establish this positive fact, it becomes incumbent upon the applicant to present an express government manifestation that the land subject of his application already constitutes patrimonial property, or is no longer retained for some public purpose."⁴

Amendments introduced by RA 11573

RA 11573⁵ took effect on September 1, 2021 days after the Court directed the parties to file their respective memoranda.

Section 6 of RA 11573 shortens the period of possession required under the old Section 14(1). Instead of requiring applicants to establish their possession from "June 12, 1945, or earlier", the new Section 14(1) only requires proof of possession "at least twenty (20) years immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*."

Equally notable is the final *proviso* of the new Section 14 (1) which expressly stated that upon proof of possession of alienable and disposable lands of the public domain for the period and in the manner required under said provision, the applicant/s "shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under this section." This final *proviso* unequivocally confirms that the classification of land as alienable and disposable immediately places it within the commerce of man. The final *proviso* thus clarifies that for purposes of confirmation of title under PD 1529, no further "express government manifestation that said land constitutes patrimonial property, or is 'no longer retained' by the State for public use, public service, or the development of national wealth" shall henceforth be required.

In line with the shortened period of possession under the new Section 14(1), the old Section 14(2) referring to confirmation of title of land acquired through prescription

³ Page no. 23 of the full text.

⁴ Ibid.

⁵ An act improving the confirmation process for imperfect land titles, amending for the purpose CA No. 141, as amended, otherwise known as "The Public Land Act", and PD No. 1529, as amended, otherwise known as the "Property Registration Decree"

has been deleted. The shortened twenty (20)-year period under the new Section 14 (1) grants possessors the right to seek registration without having to comply with the longer thirty (30) years possession required for acquisitive prescription under the Civil Code.

RA 11573 also prescribes the nature of proof sufficient to establish the status of land as alienable and disposable. At present, the presentation of the approved survey plan bearing a certification signed by a duly designated DENR geodetic engineer stating that the land subject of the application for registration forms part of the alienable and disposable agricultural land of the public domain shall be sufficient proof of its classification as such, provided that the certification bears references to: (i) the relevant issuance (e.g. Forestry Administration Order, DENR Administrative Order, Executive Order, or Proclamation); and (ii) the LC Map number covering the subject land.

In the absence of a copy of the relevant issuance classifying the subject land as alienable and disposable, the certification of the DENR geodetic engineer must state: (i) the LC Map number; (ii) the Project Number; and (iii) the date of release indicated in the LC Map; and (iv) the fact that the LC Map forms part of the records of the National Mapping and Resource Information Authority (NAMRIA) and is therefore being used by DENR as such. In addition, the DENR geodetic engineer must be presented as witness for proper authentication of the certification so presented.

Retroactive application of RA 11573

Notably, RA 11573 does not expressly provide for its retroactive application. As a general rule, laws shall have no retroactive effect, unless contrary is provided. But there are certain recognized exceptions, such as when they are remedial or procedural in nature. The Court finds that RA 11573, particularly Section 6 and Section 7, may operate retroactively to cover applications for land registration pending as of September 1, 2021 or the date when RA 11573 took effect.

Guidelines on the application of RA 11573

The Court promulgated the following guide on the application of RA 11573, quoted herein:

1. RA 11573 shall apply retroactively to all applications for judicial confirmation of title which remain pending as of **SEPTEMBER 1, 2021**, or the date when RA 11573 took effect. These include all applications pending resolution at the first instance before all Regional Trial Courts, and applications pending appeal before the Court of Appeals.
2. Applications for judicial confirmation of title filed on the basis of the old Section 14 (1) and 14 (2) of PD 1529 and which remain pending before the Regional Trial Court or Court of Appeals as of **SEPTEMBER 1, 2021** shall be resolved following the period and manner of possession required under the new Section 14 (1). Thus, beginning September 1, 2021, proof of "open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain not covered by existing certificates of title or patents under *bona fide* claim of ownership for at least twenty (20) years immediately preceding the filing of the application for confirmation" shall be sufficient for purposes of judicial confirmation of title, and shall entitle the applicant to a decree of registration.
3. In the interest of substantial justice, the Regional Trial Courts and Court of Appeals are hereby directed, upon proper motion or *motu proprio*, to permit the

presentation of additional evidence on land classification status based on the parameters set forth in Section 7 of RA 11573.

a. Such additional evidence shall consist of a certification issued by the DENR geodetic engineer which (i) states that the land subject of the application for registration has been classified as alienable and disposable land of public domain; (ii) bear reference to the applicable Forestry Administrative Order, DENR Administrative Order, Executive Order, or proclamation classifying the lands as such; and (iii) indicated the number of the LC Map covering the land.

b. In the absence of a copy of the relevant issuance classifying the land as alienable and disposable, the certification must additionally state (i) the release date of the LC Map; and (ii) the Project Number. Further the certification must confirm that the LC Map forms part of the records of NAMRIA and is precisely being used by the DENR as a land classification map.

c. The DENR geodetic engineer must be presented as witness for proper authentication of the certification in accordance with the Rules of Court. (Emphasis supplied)

On final note, the Court reminded that "the underlying philosophy of making public land available to Filipino citizens is sewn into the foundations of the Constitution; it is reflected in the exclusive reservation of land ownership to Filipinos, and is echoed in the State's mandate to promote agrarian reform and urban land reform through the just distribution of all agricultural lands, and the establishment of urban centers and resettlement areas for the homeless."⁶

The State's participation in land registration proceedings is imperative, not only at the appeal level, but more so, at the first instance before the trial courts.⁷ The State's participation in the trial court proceedings enables the parties to thresh out evidentiary issues which would not otherwise be addressed at the appeal level. Consequently, the State's belated participation at the appeal level hampers prompt and equitable resolution, and leads to protracted litigation, as in this case.⁸

II. Recommendations

Participation of the State in the Land Registration Cases in the trial courts

As mentioned by the Supreme Court in this decision, the State's participation in land registration proceedings is imperative, not only at the appeal level, but more so, at the first instance before the trial courts. Therefore, it is suggested that the Regional Offices must be enjoined to actively participate or monitor the Land Registration Cases in the trial courts to avoid the same lapse committed in this case wherein the State only participated when the case is already before the Court of Appeals.

In this regard, DENR Regional Legal Division lawyers are suggested to undertake an inventory of the said cases within their jurisdiction, and participate in its litigation to aid the OSG, and protect the interest of the State, through the DENR.

⁶ Page no. 33 of the full text.

⁷ Page no. 34 of the full text.

⁸ Ibid.

Further, the Court ordered as part of the guidelines that the DENR geodetic engineer must be presented as witness for proper authentication of the certification in accordance with the Rules of Court. In this regard, it is suggested that the DENR prepare its geodetic engineers to testify in these cases proper witness training. This may likewise be programmed as part of the duties of the offices concerned.

Adherence to the guidelines set forth by the Supreme Court in the application of RA 11573

It is also important to take note of the guidelines given by the Supreme Court in the application of RA 11573, as already provided above.

To reiterate, RA 11573 shall apply retroactively to all applications for judicial confirmation of title which remain pending as of **SEPTEMBER 1, 2021**. Application for judicial confirmation of title filed on the basis of the old Section 14 (1) and 14 (2) of PD 1529 and which remain pending as of September 1, 2021, shall be resolved following the period and manner of possession required under the new Section 14(1) which requires proof of open, continuous, exclusive, and notorious possession and occupation of alienable and disposable land for at least twenty (20) years immediately preceding the filing of the application for confirmation.

Lastly, the presentation of additional evidence on land classification status based on the parameters set forth in Section 7 of RA 11573.

Request for comments on some pronouncements of the Supreme Court

It is however observed that there are some questionable things mentioned in the decision such as:

- a. The shifting of burden of proof to the State to prove that the land is for public service or for development of the national wealth.⁹
- b. The mention of five classification of lands of public domain as provided in Section 3, Article XII of the 1987 Constitution.¹⁰ When in fact, forest land is the same as timberland.
- c. Mangroves as an example of patrimonial property of the State.¹¹

Considering this new pronouncement of the Supreme Court which appears to have changed the judicial confirmation of imperfect title, this Office requests for comments from your good office as well as comments from all DENR Regional Executive Directors and concerned bureaus regarding this case.

⁹ Page no. 22 of the full text

¹⁰ Page no. 13 of the full text

¹¹ Page no. 16 of the full text

This Office will be expecting to have the comments on or before **June 8, 2022** in time for the reglementary period to file a Motion for Reconsideration, by the Office of the Solicitor General until June 14, 2022.

For your information and consideration, Sir.


ATTY. MICHELLE ANGELICA D. GO, CESO II
PAG

Approved / Disapproved by:

JIM O. SAMPULNA, PhD, CESO I
Acting Secretary

Copy furnished:

The Regional Executive Director
DENR Region I
Government Center, Sevilla
City of San Fernando, La Union
r1@denr.gov.ph

The Regional Executive Director
DENR Region II
Regional Government Center
Carig Sur, Tuguegarao City
r2@denr.gov.ph

The Regional Executive Director
DENR Region III
DENR R3 Bldg., Government Center,
Maimpis, City of San Fernando, Pampanga
r3@denr.gov.ph

Regional Executive Director
DENR Region IV-A CALABARZON
Mayapa Main Road (along SLEX), Calamba City
r4a@denr.gov.ph

The Regional Executive Director
Region IV-B
DENR by the Bay Bldg., 1515 Roxas Boulevard,
Ermita, Manila
mimaroparegion@denr.gov.ph

The Regional Executive Director
DENR Region XI
Km.7, Lanang, Davao City
r11@denr.gov.ph

The Regional Executive Director
DENR Region XII
DENR Compound, Aurora Street, Zone IV,
Koronadal City, South Cotabato
r12@denr.gov.ph

Regional Executive Director
DENR-CAR
DENR Compound, Gibraltar, Baguio City
car@denr.gov.ph

The Regional Executive Director
DENR- CARAGA
Brgy. Ambago, Butuan City
denrcaraga13hotline@yahoo.com

The Regional Executive Director
DENR-NCR
National Ecology Center, East Avenue,
Diliman, Quezon City
denrnrcrored@gmail.com

The Regional Executive Director
DENR Region V
Regional Center Cite, Rawis, Legazpi City
red_reg5@yahoo.com

Environmental Management Bureau
DENR Compound, Visayas, Avenue,
Dilliman, Quezon City
emb.co.od@gmail.com

The Regional Executive Director
DENR Region VI
Pepita Aquini Street, Port Area,
Iloilo City, 5000
r6@denr.gov.ph

Biodiversity Management Bureau
Bago Bantay, Quezon City
bmb@bmb.gov.ph

The OIC-Regional Executive Director
DENR Region VII
National Government Center,
Sudlon, Lahug, Cebu City
reddenr7@yahoo.com

Land Management Bureau
880 F.R. Estuar Building, Quezon Avenue,
Brgy. Paligsahan, Quezon City
denrlmb@yahoo.com / lmb@denr.gov.ph

The Regional Executive Director
DENR Region VIII
Sto. Niño Extension, Tacloban City
r8@denr.gov.ph

Mines and Geoscience Bureau
MGB Compound, North Avenue,
Diliman, Quezon City
central@mgb.gov.ph

The Regional Executive Director
DENR Region IX
President Corazon C. Aquino Regional
Government Center Balintawak, Pagadian City
denr_r9@yahoo.com

Ecosystem Research and Development Bureau
ERDB Bldg., Forestry Campus, Los Baños
erdb@denr.gov.ph

The Regional Executive Director
DENR Region X
Puntod, Cagayan de Oro City
r10@denr.gov.ph

**National Mapping and Resource Information
Authority**
Lawton Avenue, Fort Andres Bonifacio,
Taguig City
css.gismb@namria.gov.ph / pntiangco@namria.gov.ph