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THIRD DIVISION

[G.R. No. 171286. June 2, 2014]

DOLORES CAMPOS, *petitioner, vs.* **DOMINADOR ORTEGA, SR.**[1] **and JAMES SILOS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; SOCIAL JUSTICE CLAUSE; DOCTRINE OF VESTED RIGHTS; DOES NOT APPLY IN CASE AT BAR; PETITIONER DOES NOT EVEN HAVE A "COGNIZABLE" RIGHT RESPECTING THE LOT IN QUESTION DUE TO HER FAILURE TO EXERCISE THEIR OPTION TO BUY THE PROPERTY DESPITE THE KNOWLEDGE THAT ONE OF THE REQUIREMENTS BEFORE AN ENTITLEMENT TO AN AWARD OF THE GOVERNMENT-OWNED LOT IS THAT THEY MUST OWN THE SUBJECT HOUSE.— Like in petitioner's case, one of the issues raised in *Magkalas v. National Housing Authority* was whether the demolition or relocation of Caridad Magkalas' structure would violate her vested rights over the subject property under the social justice provisions of the 1987 Constitution on the ground that she had been in its possession for forty (40) years. Resolving that a censused owner with assigned NHA tag number acquired no vested right over the subject property, We held: x x x A vested right is one that is absolute, complete and unconditional and no obstacle exists to its exercise. It is immediate and perfect in itself and not dependent upon any contingency. To be vested, a right must have become a title — legal or equitable — to the present or future enjoyment of property. Contrary to petitioner's position, the issuance of a tag number in her favor did not grant her irrefutable rights to the subject property. The "tagging of structures" in the Bagong Barrio area was conducted merely to determine the qualified beneficiaries and *bona fide* residents within the area. It did not necessarily signify an assurance

[1] Dominador Ortega, Sr. died on April 14, 2003 while the case was pending before the Court of Appeals. He was survived by his wife Teodora T. Ortega and children Dominador T. Ortega, Jr., Jennifer T. Ortega, and Janette T. Ortega (CA *rollo*, pp. 63-65).

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that the tagged structure would be awarded to its occupant as there were locational and physical considerations that must be taken into account, as in fact, the area where petitioner's property was located had been classified as Area Center (open space). The assignment of a tag number was a mere expectant or contingent right and could not have ripened into a vested right in favor of petitioner. Her possession and occupancy of the said property could not be characterized as fixed and absolute. As such, petitioner cannot claim that she was deprived of her vested right when the NHA ordered her relocation to another area. Neither does petitioner have a "cognizable" right respecting the lot in question. Notably, she readily admitted not exercising their option to buy Boloy's property despite the knowledge that one of the requirements before an entitlement to an award of the government-owned lot is that they must own the subject house.

2. ID.; ID.; ID.; ID.; ID.;PETITIONER'S ARGUMENT THAT THE PARTICULAR LOT NUMBER OFFERED TO THEM IS DIFFERENT FROM WHAT SHE IS APPLYING FOR IS UNTENABLE; THE OBJECT OF THE SALE IN CASE AT BAR IS A DETERMINATE THING, A SEMI-APARTMENT HOUSE, AND NOT THE LOT ON WHICH IT WAS BUILT, IT IS, THEREFORE, TOTALLY IMMATERIAL IF THE LAND ON WHICH THE STRUCTURE STOOD WAS INDICATED AS LOT 17 OR LOT 18.— Petitioner argues that what prompted her refusal to purchase was not a matter of whimsical preference, not really insisting on any preferential right, but on imminent apprehension that the house that was being sold by Boloy is situated at Lot 17 while they were occupying Lot 18; that the particular lot number is different from what she is applying; and that said lot is actually occupied by another person who too may have already qualified as a ZIP beneficiary, resulting in conflict of award. She contends that she could not be compelled to suddenly become particularly interested in a lot that is completely different from the one where the house structure she occupies is situated and that the structure owner in Lot 17 may not be willing to sell the same. The argument is untenable. Petitioner is certainly confused. There should be no doubt that the object of the sale is a determinate thing, a semi-apartment house owned by Boloy and not the specific lot on which it was built. Thus, it is totally immaterial if the land on which the structure stood was indicated as Lot 17 or Lot 18. It should not have been a

source of needless concern on the part of petitioner mainly because the lots in the Hulo estate were at the time owned by the government prior to the actual award to qualified beneficiaries. Likewise, petitioner has not shown that Boloy, or another specific person, actually owned a housing structure in Lot 17 aside from the one they were leasing in Lot 18.

3. CIVIL LAW; CIVIL CODE; CONTRACTS; FRAUD; PETITIONER MISERABLY FAILED TO DEMONSTRATE THAT RESPONDENTS COMMITTED FRAUD OR THAT THEY CONNIVED WITH GOVERNMENT OFFICIALS AND EMPLOYEES TO CAUSE UNDUE DAMAGE OR PREJUDICE TO HER.— The presence or absence of fraud is a factual issue. As a general rule, only questions of law may be raised in a petition for review on *certiorari* filed with this Court and factual findings of the trial courts, when adopted and confirmed by the CA, are final and conclusive on this Court, except when the CA judgment is based on a misapprehension of facts or the factual inferences are manifestly incorrect or when that court overlooked certain relevant facts which, if properly considered, would justify a different conclusion. In this case, petitioner, as the party alleging fraud in the transaction and the one who bears the burden of proof, miserably failed to demonstrate that respondents committed fraud or that they connived with government officials and employees to cause undue damage or prejudice to petitioner. Petitioner did not present even a single evidence to support the view that the repetitive absences of the persons necessary for the meetings before the Arbitration and Awards Committee were intentional or done with malicious intent. Also, as the CA found, records would show that respondent Ortega, Sr. initially purchased 1/3 of the residential structure on November 23, 1987, per Deed of Absolute Sale, which, recognizing his co-occupancy with others, also gave respondent Silos and petitioner the similar option to buy their respective 1/3 portion. Petitioner did not exercise the option given. Hence, upon such failure, the entire structure was eventually sold to both respondents through the Deed of Sale dated February 19, 1988.

4. ID.; ID.; PROPERTY; THE APPROPRIATE LEGAL REMEDY THAT PETITIONER SHOULD HAVE AVAILED OF IS AN ACTION FOR RECONVEYANCE BASED ON A CONSTRUCTIVE TRUST.— The appropriate legal remedy that petitioner should have availed is an action

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for reconveyance. Proof of actual fraud is not required as it may be filed even when no fraud intervened such as when there is mistake in including the land for registration. Under the principle of constructive trust, registration of property by one person in his name, whether by mistake or fraud, the real owner being another person, impresses upon the title so acquired the character of a constructive trust for the real owner, which would justify an action for reconveyance. In the action for reconveyance, the decree of registration is respected as incontrovertible but what is sought instead is the transfer of the property wrongfully or erroneously registered in another's name to its rightful owner or to one with a better right. If the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee, and the real owner is entitled to file an action for reconveyance of the property.

5. **ID.; ID.; ID.; AN ACTION FOR RECONVEYANCE BASED ON AN IMPLIED OR CONSTRUCTIVE TRUST IS IMPRESCRIPTIBLE IF THE PLAINTIFF OR THE PERSON ENFORCING THE TRUST IS IN POSSESSION OF THE PROPERTY.—** An action for reconveyance resulting from fraud prescribes four years from the discovery of the fraud, which is deemed to have taken place upon the issuance of the certificate of title over the property, and if based on an implied or a constructive trust it prescribes ten (10) years from the alleged fraudulent registration or date of issuance of the certificate of title over the property. However, an action for reconveyance based on implied or constructive trust is imprescriptible if the plaintiff or the person enforcing the trust is in possession of the property. In effect, the action for reconveyance is an action to quiet title to the property, which does not prescribe. In this case, petitioner, taking into account Article 1155 of the Civil Code and jurisprudence on the matter, should be guided by the following facts in enforcing her legal remedy/ies, if still any: (1) her judicial admission that they no longer possess the subject lot, claiming that they stayed therein from 1966 until 1997 when they were ejected by the sheriff of Pasig RTC; (2) TCT No. 13342 was issued on December 9, 1997; and (3) the instant case for specific performance with damages was filed on August 17, 1999.

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6. ID.; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (P.D. 1529); THE CASE FOR SPECIFIC PERFORMANCE WITH DAMAGES EFFECTIVELY ATTACKS THE VALIDITY OF RESPONDENT'S TITLE OVER THE SUBJECT LOT; A COLLATERAL ATTACK IS NOT PERMITTED UNDER THE PRINCIPLE OF INDEFEASIBILITY OF TORRENS TITLE UNDER P.D. 1529.— We agree with the CA that the case for specific performance with damages instituted by petitioner effectively attacks the validity of respondents' Torrens title over the subject lot. It is evident that, ultimately, the objective of such claim is to nullify the title of respondents to the property in question, which, in turn, challenges the judgment pursuant to which the title was decreed. This is a collateral attack that is not permitted under the principle of indefeasibility of Torrens title. Section 48 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, unequivocally states: SEC. 48. *Certificate not subject to collateral attack.* — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law. A collateral attack transpires when, in another action to obtain a different relief and as an incident to the present action, an attack is made against the judgment granting the title while a direct attack (against a judgment granting the title) is an action whose main objective is to annul, set aside, or enjoin the enforcement of such judgment if not yet implemented, or to seek recovery if the property titled under the judgment had been disposed of. The issue on the validity of title, *i.e.*, whether or not it was fraudulently issued, can only be raised in an action expressly instituted for that purpose.

APPEARANCES OF COUNSEL

Pajares Asual & Adaci Law Offices for petitioner.
Celso A. Tabobo, Jr. for respondents.

D E C I S I O N

PERALTA, *J.*:

This petition for review on *certiorari* under Rule 45 of the 1997 Revised Rules on Civil Procedure (*Rules*) seeks the reversal

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of the August 12, 2005 Decision[2] and January 17, 2006 Resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 76994, which set aside the November 12, 2002 Decision[4] of the Mandaluyong City Regional Trial Court, Branch 213 (*RTC*) and, in effect, dismissed petitioner's complaint for specific performance and damages.

On August 17, 1999, petitioner Dolores Campos, through her attorney-in-fact, Salvador Pagunsan (*Pagunsan*), filed a case for specific performance with damages against respondents Dominador Ortega, Sr. (*Ortega, Sr.*) and James Silos (*Silos*). The "Petition" stated, among others, that:

> 2. Plaintiff, and her husband [Ernesto Campos], along with their family, occupied the entire second level as well as the front portion of the ground level of a residential structure located at No. 208[5] F. Blumentritt Street, Mandaluyong City. The lot on which the said structure is standing is owned by the government, while the structure itself is owned by [Dominga Boloy] from whom plaintiff leased the same beginning in 1966;
>
> 2.1 Plaintiff had, in fact, paid the real estate taxes in behalf of Dominga Boloy in 1987, including the arrearages that accumulated from 1979 in view of the apparent abandonment by Dominga Boloy on these obligations x x x;
>
> 3. In 1977, under and pursuant to the Zonal Improvement Program [ZIP] of the then Metro Manila Commission,[6] in coordination with the Local Government of Mandaluyong, a census of the Hulo estate, where plaintiff's dwelling is located, was conducted wherein plaintiff was among those censused and qualified as a *bona fide* occupant x x x;

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[2] Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Conrado M. Vasquez, Jr. and Jose C. Mendoza (now a member of the Court) concurring; *rollo*, pp. 27-40.

[3] *Rollo*, pp. 41-43.

[4] CA *rollo*, pp. 31-35.

[5] Formerly 600 (TSN, July 23, 2001, pp. 6-7.)

[6] The predecessor of the Metropolitan Manila Development Authority (MMDA)

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4. As a consequence of having qualified, plaintiff was assigned an identifying house tag number **77-00070-08** on August 20, 1977 x x x;

5. In 1979, after the death of the owner Dominga Boloy, plaintiff had a verbal understanding with Clarita Boloy, daughter-in-law of the former, to allow plaintiff to introduce improvements and renovations on the structure, in which she incurred expenses amounting to about ₱10,000.00. It was further agreed that said amount shall be accordingly applied to their monthly rentals. x x x. The foregoing agreement, however, was never followed and plaintiff was made to continue paying the monthly obligations because of the assurance of Clarita Boloy that the expenses incurred by plaintiff will just be reimbursed in full, but even this latter agreement never materialized;

6. In 1987, Walter Boloy stepped into the situation and thru counsel demanded from the plaintiff and family the immediate vacation of the subject premises. An ejectment suit was eventually filed against plaintiff but [it] was later dismissed by the Metropolitan Trial Court (Branch 59, Mandaluyong City) in its February 12, 1986 decision x x x;

7. After receiving the said decision, and after having verified her husband's status as a *bona fide* [occupant], plaintiff forthwith authorized [her] nephew Salvador Pagunsan to follow up with the NHA the matter concerning the award of lot to them in line with the [ZIP], more particularly after learning that all *bona fide* occupants may be allowed to buy the structure if the owner has already died;

8. In the course of [the follow up], Salvador Pagunsan was informed by one Antonio Fernando thru a letter of July 20, 1987, that if Ernesto Campos, who was duly censused as a *bona fide* occupant, may be able to buy the property from Mr. Walter Boloy, Ernesto Campos may be awarded the lot on which the structure is located;

9. On November 19, 1987, plaintiff's attorney-in-fact, Salvador Pagunsan attended the meeting scheduled by the Arbitration and Awards Committee [AAC] held at the Budget Office of the Mandaluyong Municipal Hall x x x but[,] except for Atty. Eddie Fernandez, who represented the Local Government of Mandaluyong, no other representative from the NHA came. In said meeting, Atty. Fernandez gave plaintiff one month, or until December 19, 1987, to buy the property denominated as **Lot 17, Block 7, Phase III,** of the Hulo estate;

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10. Plaintiff did not accede to the offer since the lot occupied by them and where they were duly censused as occupants is **Lot 18**, Block 7, whereas the one offered to be sold is Lot 17, which pertains to a different owner;

11. Another meeting was set on December 17, 1987, this time at the Administrator's Office of the Mandaluyong Municipal Hall x x x. Again, nobody attended from the NHA. On February 4, 1988, yet another meeting was set, and the same result happened;

12. But it was learned by plaintiff, however *(sic)*, that on the same date, February 4, 1988, the property [was already] awarded to James Silos and Dominador Ortega, [Sr.], and that on **November 23, 1987,** *just four days after the initial meeting* scheduled by the [AAC] of the NHA (on November 19, 1987, paragraph [9], *supra*) a Deed of Absolute Sale [was] executed by and between Clarita Boloy (in representation of Helen Telos Boloy Williams) and Dominador Ortega, [Sr..] over **Lot 17, Block 7** x x x. This despite the fact that during the said initial meeting, plaintiff was given **one month** to exercise the option of buying the property;

13. In paragraph 5 of the aforementioned deed, the "xxx [V]endor warrants her legal and absolute ownership of the aforesaid semi-apartment house ...," which is highly disputable considering that no due transfer whatsoever was made by the structure owner Dominga Boloy who was still single at the time of her death and who died without issue. Moreover, in the earlier ejectment suit filed by Walter Boloy (paragraph [6], *supra*), his relation [to] Dominga Boloy was never proven[;] hence, his claim of any authority, and that of her daughter Helen Telos Boloy Williams, to deal with the property in any manner is completely baseless and a sham;

14. On **February 19, 1988,** a similar, or almost identical, Deed of Absolute Sale x x x was executed by and between the same parties in the instrument executed on November 23, 1987, only that this time, in [comparison] with the first deed of sale, it is very noticeable that the name of plaintiff Dolores Campos which was mentioned in paragraph 3 of the first deed as one of the renters and as a home-lot applicant was **omitted** in this second deed;

15. Plaintiff, thru her representative, inquired with the NHA and questioned the award of the lot to defendants who are disqualified for not having been duly censused either as renters or sharers, and also the matter regarding the alteration the lot number actually being occupied by plaintiff. But the NHA could not offer a satisfactory

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explanation to the seemingly irregular process. A certain Ms. Myrna Cuarin of the Legal Department refused to show the book containing the list of the qualified occupants and their respective true house tag number;

16. Plaintiff only came to know later that a Transfer Certificate of Title [was already] issued to Dominador Ortega, [Sr.] and James Silos over the lot despite the appeal made by plaintiff with the NHA, much to her damage and prejudice;

17. Defendants Dominador Ortega, Sr. and James Silos are disqualified to become lot owners since they were not duly censused as renters or sharers, pursuant to the ZIP Guideline Circular No. 1 dated [September 16, 1977] of the NHA x x x. Moreover, only those who have been actually residing in the ZIP Project area before August 15, 1975 shall be considered to qualify as beneficiaries, but herein defendants have commenced their residence only after the said date[;] hence, they are not qualified beneficiaries, but just the same the lot was awarded by the NHA to them;

18. The promptitude of the award by the NHA to herein defendants was maneuvered *(sic)* by the latter in circumvention of the real right that has already accrued to plaintiff as a *bona fide* applicant who has duly qualified as a beneficiary. In fact, she had been given the right to purchase the structure only to find out that it had been already transferred to another in complete disregard of herein plaintiff's right (see paragraph 12, *supra*);

19. As a result of the bypassing of plaintiff's right[,] she was dislocated, [has] suffered sleepless nights, mental anguish, wounded feelings, and undue embarrassment, among others, the assessment of which in pecuniary terms is left to the sound discretion of this Honorable Court.

WHEREFORE, in view of the foregoing premises, it is most respectfully prayed of this Honorable Court that after due hearing a judgment be rendered declaring the acquisition by defendants of Lot 18, Block 7 of the Hulo Estate void for being in fraud of herein plaintiff; directing the defendants to surrender their title to the [NHA]; and directing the [NHA] to recognize plaintiff's right to purchase the structure and giving her reasonable opportunity to exercise said right.[7]

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[7] Records, pp. 2-6. (Emphasis in the original)

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Respondents countered that the complaint stated no cause of action, and that, if any, such cause of action is already barred by prior judgment. They noted petitioner's admission in the *Verification* that an action for recovery of possession was commenced against her by respondents before the Pasig City RTC, Branch 153, involving the same property; that it was resolved in respondents' favor on October 12, 1992; and that such decision was affirmed by the CA on May 30, 1996 and became final and executory on September 14, 1996. Respondents also contended that the case was prematurely filed since there was no prior recourse to the barangay conciliation as required by Section 412 of the Revised Katarungang Pambarangay Law. Lastly, respondents argued that they are registered owners of the land in question as well as the house built thereon by virtue of Transfer Certificate of Title (TCT) No. 13342 and tax declarations, and that the Torrens title cannot be altered, modified or cancelled except through a direct proceeding.

Trial ensued. Presented as witnesses for the plaintiff were petitioner herself, Pagunsan, and Dolores Abad Juan, who claimed to be a bookkeeper of the NHA and a member of its census team in 1977.[8] Only Ortega, Sr. testified for and in behalf of the defendants.

On November 12, 2002, the RTC ruled in favor of petitioner. The dispositive portion of the Decision reads:

> WHEREFORE, accordingly the acquisition of [DOMINADOR] V. ORTEGA and JAMES SILOS of Lot 18 Block 7 of the Hulo estate is hereby declared VOID for being violative of the right of the plaintiff. Herein defendants are hereby ordered to surrender their title to the National Housing Authority (NHA). Finally, the [NHA] is hereby ordered to recognize plaintiff's right to purchase the structure and give her reasonable time within which to exercise said right.
>
> No pronouncement as to cost.
>
> SO ORDERED.[9]

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[8] Exhibit "L", Evidence Folder p. 12; TSN, September 3, 2001, p. 5.

[9] CA *rollo*, pp. 34-35.

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For lack of clear and convincing proof, the RTC rejected the allegation that respondents are guilty of committing fraud and, consequently, denied petitioner's claim for damages. Despite this, it held that the principle of *res judicata* is inapplicable and that petitioner has a vested right over the subject property. The trial court opined:

> x x x The case being referred to by defendants is for the *recovery of possession* filed in Pasig City Court, which judgment was confirmed by the Honorable Court of Appeals. In that case, the appellate [court] ruled that the defendants in this case [have] better rights over the said property, it being titled under their names. Therefore, the cause of action in the previous case involves the right of possession over the disputed property. In the instant case, the cause of action is the violation of the plaintiff's right to exercise their right to buy the property in dispute within the period given by the Arbitration and Awards Committee of the National Housing Authority in [coordination] with the Local Government of Mandaluyong City. Thus, this court was never swayed by the [defendants'] argument that res judicata is present. There is no identity of the cause of action between the Pasig case and the instant case.
>
> Under the Zonal Improvement Program Guideline Circular No. 1 dated September 16, 1977 of the National Housing [Authority], plaintiff is a qualified beneficiary of NHA's Zonal Improvement Program[,] she being in the premises since 1966 as lessee of a residential structure. According to the aforementioned circular, only occupants who have been actually residing in the ZIP project area either as sharer or renter before August 15, 1975 are qualified beneficiaries under this NHA program. The plaintiff was given until December 19, 1987 within which to buy the property located at Lot 17, Block 7[,] Phase III of the Hulo estate but did not exercise her right because the property involved is different from what she had been occupying since 1966 until they left. Before any clarification was made on this matter and before plaintiff could exercise [her] right to purchase, [she] learned that the property, Lot 18, Block [7], Phase III of Hulo estate was already sold to herein defendants in violation of her right. The court is convinced that plaintiff has acquired a vested right over the subject property. Such right is protected by law and a violation of said right will give rise to a valid cause of action.[10]

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[10] *Id.* at 33-34. (Emphasis in the original)

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Upon appeal by respondents, the CA reversed the trial court's decision. In ruling that petitioner has no vested right over the subject parcel of land and the residential structure standing thereon, the appellate court pronounced:

> To our mind, [respondents] correctly underscore the fact that, even from the testimonial evidence proffered by [petitioner], there is no gainsaying [of] their lease of the first floor of the residential structure owned by Dominga Boloy. Although the commencement of their contract with the latter had, admittedly, not been exactly established, the record ineluctably shows that both [respondents] had attended the meetings conducted by the NHA Arbitration Committee for the purpose of awarding the lots covered by the ZIP. Even more significantly, [respondent] [Ortega, Sr.] was also included in the NHA's [1977] survey of the Hulo Estate and was, in fact, issued a separate identifying house tag alongside [petitioner's] husband.
>
> In contrast, [petitioner's] lease of the second floor since 1966 clearly qualified her as a "beneficiary" under the ZIP Guideline Circular No. 1 which employs the term to refer to those who permanently reside in the project site either as owners of residential structures or renters/sharers thereof before August 15, 1975 up to the time that the area has been adopted as a slum-upgrading site. Unlike [respondents] who immediately availed of the opportunity they were afforded to purchase their own residential lot, however, it appears that [petitioner] demurred when the NHA offered her the chance of buying Lot 17, Block [7] of the Hulo Estate until December [19], 1987. On this score alone, we find that [petitioner] cannot be presently heard to complain that she had been unjustifiably deprived of her right as a qualified beneficiary under the aforesaid program.
>
> [Petitioner] had, of course, impressed upon the trial court that the reason for her refusal was the fact that, as occupant of the residential structure on Lot 18, Block 7, she had been offered the wrong lot by the NHA. It bears emphasizing, however, that ZIP Guideline Circular No. 1 does not give renters or sharers a preferential right to purchase a particular lot within the ZIP project site. While actual owners of structures are thereunder given priority to stay in the project site, house renters or [sharers] like [petitioner] are only entitled to accommodation in a relocation site, if one is available, or "allowed to continue within the project area, together with the owner of the structures they are renting." In this particular regard,

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even [petitioner] conceded that she could have acquired the subject lot had she purchased the residential structure owned by Dominga Boloy or, at least, her allotted 1/3 portion thereof.

Viewed in the foregoing light, it would appear that [respondents'] further acquisition of the subject residential structure from the successors-in-interest of Dominga Boloy should have likewise militated against [petitioner's] cause. Indeed, the record shows that [respondent] [Ortega, Sr.] initially purchased 1/3 of said residential structure in the November 23, 1987 Deed of Absolute Sale[,] which, in recognition of their co-occupancy, also gave both [respondent] Silos and [petitioner] the option to buy their respective 1/3 portion thereof. After the conclusion of the meetings called by the NHA Arbitration Committee and upon [petitioner's] failure to exercise said option, the entire structure was, finally, sold in favor of both [respondents] thru the Deed of Sale dated February 19, 1988.[11]

The CA also gave credit to respondents for causing the titling of the subject lot in their names, declaring it for taxation purposes, and paying the realty taxes due thereon. While petitioner's tax declarations are considered as good indicia of possession in the concept of the owner, the appellate court ruled that respondents' certificate of title is indefeasible and cannot be subject of a collateral attack like petitioner's present complaint for specific performance and damages. Even if a transfer of title that is replete with badges of fraud and irregularities renders nugatory and inoperative the existing doctrines on land registration and land titles, the CA opined that petitioner lost sight of the fact that the trial court discounted the existence of fraud which she imputed against respondents' acquisition of the subject parcel and the fact that she did not appeal such finding. In the end, for petitioner's failure to present clear and convincing evidence to the contrary, the appellate court upheld the presumption of regularity of official acts and resolved not to disturb the NHA's award in favor of respondents.

Petitioner moved for reconsideration, but it was denied. Now before Us, the following issues for resolution were raised:

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[11] *Id*. at 86-88.

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WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE REGIONAL TRIAL COURT, PARTICULARLY, IN FAILING TO RECOGNIZE THAT PETITIONER HAS ALREADY ACQUIRED A VESTED AND COGNIZABLE RIGHT RESPECTING THE PROPERTY.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE PRESUMPTION OF REGULARITY OF OFFICIAL ACTS RESPECTING THE PROCESS OF AWARD OF THE PROPERTY MADE TO THE RESPONDENTS, AND RULE OUT THE ATTENDANT IRREGULARITIES AS INSUFFICIENT TO OVERCOME THE SAID PRESUMPTION.[12]

The Court is unimpressed.

Like in petitioner's case, one of the issues raised in *Magkalas v. National Housing Authority*[13] was whether the demolition or relocation of Caridad Magkalas' structure would violate her vested rights over the subject property under the social justice provisions of the 1987 Constitution on the ground that she had been in its possession for forty (40) years. Resolving that a censused owner with assigned NHA tag number acquired no vested right over the subject property, We held:

> Neither can it be successfully argued that petitioner had already acquired a vested right over the subject property when the NHA recognized her as the censused owner by assigning to her a tag number (TAG No. 77-0063). We quote with approval the trial court's pertinent findings on the matter:
>
> > Plaintiff's structure was one of those found existing during the census/survey of the area, and her structure was assigned TAG No. 77-0063. While it is true that NHA recognizes plaintiff as the censused owner of the structure built on the lot, the issuance of the tag number is not a guarantee for lot allocation. Plaintiff had petitioned the NHA for the award to her of the lot she is occupying. However, the census, tagging, and plaintiff's petition, did not vest upon her a legal title to the

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[12] *Rollo*, p. 96.

[13] 587 Phil. 152 (2008).

> lot she was occupying, but a mere expectancy that the lot will be awarded to her. The expectancy did not ripen into a legal title when the NHA, through Ms. Ines Gonzales, sent a letter dated March 8, 1994 informing her that her petition for the award of the lot was denied. Moreover, the NHA, after the conduct of studies and consultation with residents, had designated Area 1, where the lot petitioned by plaintiff is located, as an Area Center.

A vested right is one that is absolute, complete and unconditional and no obstacle exists to its exercise. It is immediate and perfect in itself and not dependent upon any contingency. To be vested, a right must have become a title — legal or equitable — to the present or future enjoyment of property.

Contrary to petitioner's position, the issuance of a tag number in her favor did not grant her irrefutable rights to the subject property. The "tagging of structures" in the Bagong Barrio area was conducted merely to determine the qualified beneficiaries and *bona fide* residents within the area. It did not necessarily signify an assurance that the tagged structure would be awarded to its occupant as there were locational and physical considerations that must be taken into account, as in fact, the area where petitioner's property was located had been classified as Area Center (open space). The assignment of a tag number was a mere expectant or contingent right and could not have ripened into a vested right in favor of petitioner. Her possession and occupancy of the said property could not be characterized as fixed and absolute. As such, petitioner cannot claim that she was deprived of her vested right when the NHA ordered her relocation to another area.[14]

Neither does petitioner have a "cognizable" right respecting the lot in question. Notably, she readily admitted not exercising their option to buy Boloy's property despite the knowledge that one of the requirements before an entitlement to an award of the government-owned lot is that they must own the subject house.[15]

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[14] *Magkalas v. National Housing Authority*, *supra*, at 161-162 (2008).

[15] TSN, July 23, 2001, pp. 31-32.

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Petitioner argues that what prompted her refusal to purchase was not a matter of whimsical preference, not really insisting on any preferential right, but on imminent apprehension that the house that was being sold by Boloy is situated at Lot 17 while they were occupying Lot 18; that the particular lot number is different from what she is applying; and that said lot is actually occupied by another person who too may have already qualified as a ZIP beneficiary, resulting in conflict of award. She contends that she could not be compelled to suddenly become particularly interested in a lot that is completely different from the one where the house structure she occupies is situated and that the structure owner in Lot 17 may not be willing to sell the same.

The argument is untenable. Petitioner is certainly confused. There should be no doubt that the object of the sale is a determinate thing, a semi-apartment house owned by Boloy and not the specific lot on which it was built. Thus, it is totally immaterial if the land on which the structure stood was indicated as Lot 17 or Lot 18. It should not have been a source of needless concern on the part of petitioner mainly because the lots in the Hulo estate were at the time owned by the government prior to the actual award to qualified beneficiaries. Likewise, petitioner has not shown that Boloy, or another specific person, actually owned a housing structure in Lot 17 aside from the one they were leasing in Lot 18.

Petitioner next alleges that the entire process was pock-marked with irregularities too nagging to be ignored, and collectively outweighed the presumption of regularity; that the meetings only proved to be farcical, even embarrassing; and that the repetitive absence of the persons necessary for those meetings could not have been trifling or insignificant since, as what later proved to have transpired, the execution of a deed of conveyance for the property was already taking place while petitioner was still unsuspectingly relying on the prospects of the scheduled meetings. Particularly, she maintains that the brazen irregularity took place just four days after the initial meeting on November 19, 1987 with the execution of the Deed of Absolute Sale on November 23, 1987 in favor of respondents who surreptitiously and

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effectively pre-empted the option given her to purchase the residential structure, easing her out from the race, so to speak. These fail to convince.

The presence or absence of fraud is a factual issue.[16] As a general rule, only questions of law may be raised in a petition for review on *certiorari* filed with this Court and factual findings of the trial courts, when adopted and confirmed by the CA, are final and conclusive on this Court, except when the CA judgment is based on a misapprehension of facts or the factual inferences are manifestly incorrect or when that court overlooked certain relevant facts which, if properly considered, would justify a different conclusion.[17]

In this case, petitioner, as the party alleging fraud in the transaction and the one who bears the burden of proof,[18] miserably failed to demonstrate that respondents committed fraud or that they connived with government officials and employees to cause undue damage or prejudice to petitioner. Petitioner did not present even a single evidence to support the view that the repetitive absences of the persons necessary for the meetings before the Arbitration and Awards Committee were intentional or done with malicious intent. Also, as the CA found, records would show that respondent Ortega, Sr. initially purchased 1/3 of the residential structure on November 23, 1987, per Deed of Absolute Sale, which, recognizing his co-occupancy with others, also gave respondent Silos and petitioner the similar option to buy their respective 1/3 portion. Petitioner did not exercise the option given. Hence, upon such failure, the entire structure was eventually sold to both respondents through the Deed of Sale dated February 19, 1988.

We agree with the CA that the case for specific performance with damages instituted by petitioner effectively attacks the

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[16] *Republic of the Philippines v. Guerrero*, 520 Phil. 296, 306 (2006).

[17] *Id.*

[18] *Id*. at 310.

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validity of respondents' Torrens title over the subject lot. It is evident that, ultimately, the objective of such claim is to nullify the title of respondents to the property in question, which, in turn, challenges the judgment pursuant to which the title was decreed. This is a collateral attack that is not permitted under the principle of indefeasibility of Torrens title. Section 48 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, unequivocally states:

> SEC. 48. *Certificate not subject to collateral attack.* — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

A collateral attack transpires when, in another action to obtain a different relief and as an incident to the present action, an attack is made against the judgment granting the title while a direct attack (against a judgment granting the title) is an action whose main objective is to annul, set aside, or enjoin the enforcement of such judgment if not yet implemented, or to seek recovery if the property titled under the judgment had been disposed of.[19] The issue on the validity of title, *i.e.*, whether or not it was fraudulently issued, can only be raised in an action expressly instituted for that purpose.[20]

The appropriate legal remedy that petitioner should have availed is an action for reconveyance. Proof of actual fraud is not required as it may be filed even when no fraud intervened such as when there is mistake in including the land for registration.

Under the principle of constructive trust, registration of property by one person in his name, whether by mistake or fraud, the real owner being another person, impresses upon the title so acquired the character of a constructive trust for the real owner, which would justify an action for reconveyance. In the action for reconveyance, the decree of registration is respected as incontrovertible but what is sought instead is the transfer of

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[19] *Urieta Vda. de Aguilar v. Alfaro*, G.R. No. 164402, July 5, 2010, 623 SCRA 130, 143-144.

[20] *Id.* at 145.

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the property wrongfully or erroneously registered in another's name to its rightful owner or to one with a better right. If the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee, and the real owner is entitled to file an action for reconveyance of the property.[21]

An action for reconveyance resulting from fraud prescribes four years from the discovery of the fraud, which is deemed to have taken place upon the issuance of the certificate of title over the property, and if based on an implied or a constructive trust it prescribes ten (10) years from the alleged fraudulent registration or date of issuance of the certificate of title over the property.[22] However, an action for reconveyance based on implied or constructive trust is imprescriptible if the plaintiff or the person enforcing the trust is in possession of the property.[23] In effect, the action for reconveyance is an action to quiet title to the property, which does not prescribe.[24] We said in *Yared v. Tiongco*:[25]

> The Court agrees with the CA's disquisition that an action for reconveyance can indeed be barred by prescription. In a long line of cases decided by this Court, we ruled that an action for reconveyance based on implied or constructive trust must perforce prescribe in ten (10) years from the issuance of the Torrens title over the property.
>
> However, there is an exception to this rule. In the case of *Heirs of Pomposa Saludares v. Court of Appeals*, the Court, reiterating the ruling in *Millena v. Court of Appeals*, held that there is but one instance when prescription cannot be invoked in an action for reconveyance, that is, when the plaintiff is in possession of the land to be reconveyed. In *Heirs of Pomposa Saludares*, this Court explained that the Court, in a series of cases, has permitted the filing of an

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[21] *Pasiño v. Dr. Monterroyo*, 582 Phil. 703, 715-716. (2008).

[22] *Philippine Economic Zone Authority (PEZA) v. Fernandez*, 411 Phil. 107, 119 (2001).

[23] *Id.*

[24] *Id*.

[25] G.R. No. 161360, October 19, 2011, 659 SCRA 545.

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action for reconveyance despite the lapse of more than ten (10) years from the issuance of title to the land and declared that said action, when based on fraud, is imprescriptible as long as the land has not passed to an innocent buyer for value. But in all those cases, the common factual backdrop was that the registered owners were never in possession of the disputed property. The exception was based on the theory that registration proceedings could not be used as a shield for fraud or for enriching a person at the expense of another.

In *Alfredo v. Borras*, the Court ruled that prescription does not run against the plaintiff in actual possession of the disputed land because such plaintiff has a right to wait until his possession is disturbed or his title is questioned before initiating an action to vindicate his right. His undisturbed possession gives him the continuing right to seek the aid of a court of equity to determine the nature of the adverse claim of a third party and its effect on his title. The Court held that where the plaintiff in an action for reconveyance remains in possession of the subject land, the action for reconveyance becomes in effect an action to quiet title to property, which is not subject to prescription.

The Court reiterated such rule in the case of *Vda. de Cabrera v. Court of Appeals*, wherein we ruled that the imprescriptibility of an action for reconveyance based on implied or constructive trust applies only when the plaintiff or the person enforcing the trust is not in possession of the property. In effect, the action for reconveyance is an action to quiet the property title, which does not prescribe.

Similarly, in the case of *David v. Malay*, the Court held that there was no doubt about the fact that an action for reconveyance based on an implied trust ordinarily prescribes in ten (10) years. This rule assumes, however, that there is an actual need to initiate that action, for when the right of the true and real owner is recognized, expressly or implicitly such as when he remains undisturbed in his possession, the statute of limitation would yet be irrelevant. An action for reconveyance, if nonetheless brought, would be in the nature of a suit for quieting of title, or its equivalent, an action that is imprescriptible. In that case, the Court reiterated the ruling in *Faja v. Court of Appeals* which we quote:

> x x x There is settled jurisprudence that one who is in actual possession of a piece of land claiming to be owner thereof may wait until his possession is disturbed or his title is attacked

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> before taking steps to vindicate his right, the reason for the rule being, that his undisturbed possession gives him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by one who is in possession. No better situation can be conceived at the moment for Us to apply this rule on equity than that of herein petitioners whose mother, Felipa Faja, was in possession of the litigated property for no less than 30 years and was suddenly confronted with a claim that the land she had been occupying and cultivating all these years, was titled in the name of a third person. We hold that in such a situation the right to quiet title to the property, to seek its reconveyance and annul any certificate of title covering it, accrued only from the time the one in possession was made aware of a claim adverse to his own, and it is only then that the statutory period of prescription commences to run against such possessor.[26]

In this case, petitioner, taking into account Article 1155 of the Civil Code[27] and jurisprudence[28] on the matter, should be guided by the following facts in enforcing her legal remedy/ies, if still any: (1) her judicial admission that they no longer possess the subject lot, claiming that they stayed therein from 1966 until 1997 when they were ejected by the sheriff of Pasig RTC;[29] (2) TCT No. 13342 was issued on December 9, 1997; and (3) the instant case for specific performance with damages was filed on August 17, 1999.

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[26] *Yared v. Tiongco*, *supra*, at 552-554.

[27] ART. 1155. The prescription of actions in interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgement of the debt by the debtor.

[28] See *Ampeloquio, Sr. v. Napiza*, 536 Phil. 1102 (2006); *Permanent Savings and Loan Bank v. Velarde*, G.R. No. 140608, September 23, 2004, 439 SCRA 1; *Ledesma v. Court of Appeals*, G.R. No. 106646, June 30, 1993, 224 SCRA 175; *Philippine National Railways v. National Labor Relations Commission*, 258 Phil. 552 (1989); and *The Overseas Bank of Manila v. Geraldez*, 183 Phil. 493 (1979).

[29] TSN, July 23, 2001, pp. 7, 33-34, 36-37.

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WHEREFORE, premises considered, the Petition is **DENIED.** The August 12, 2005 Decision and January 17, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 76994, which dismissed petitioner's complaint for specific performance and damages docketed as Civil Case No. MC99-826 before the Mandaluyong City Regional Trial Court, Branch 213, are hereby **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), del Castillo,[*] *Villarama,*[**] and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 180416. June 2, 2014]

ADERITO Z. YUJUICO and BONIFACIO C. SUMBILLA, *petitioners, vs.* **CEZAR T. QUIAMBAO and ERIC C. PILAPIL,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE; CORPORATE BOOKS AND RECORDS; THE ACT OF REFUSING TO ALLOW INSPECTION OF THE STOCK AND TRANSFER BOOK OF A CORPORATION, WHEN DONE IN VIOLATION OF SECTION 74(4) OF THE CORPORATION CODE, IS PUNISHABLE AS AN OFFENSE UNDER SECTION 144 OF THE SAME CODE.— While Section 74 of the Corporation Code expressly mentions the application of Section 144 only in relation to the act of "*refus*[*ing*] *to allow any director, trustees*, [*the corporation's*]

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[*] Designated additional member in liue of Associate Justice Jose Catral Mendoza, per Raffle dated June 2, 2014.

[**] Designated Acting member, per Special Order No. 1691 dated May 22, 2014.