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WHEREFORE, the petition is **DENIED**. The March 18, 2010 Decision of the Court of Appeals and its June 7, 2010 Resolution, in CA-G.R. SP No. 109975, are hereby **AFFIRMED**.

SO ORDERED.

Carpio,[*] *Peralta (Acting Chairperson),*[**] *Abad* and *Perez,*[***] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 186961. February 20, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **EAST SILVERLANE REALTY DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF FACT, NOT PROPER; EXCEPTIONS.— [T]he issue of whether the respondent had presented sufficient proof of the required possession under a *bona fide* claim of ownership raises a question of fact, considering that it invites an evaluation of the evidentiary record. However, that x x x this Court is not a trier of facts and bound by the factual findings of the CA are not without exceptions. Among these exceptions,

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[*] Designated as additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1185 dated February 10, 2012.

[**] Designated as Acting Chairperson, per Special Order No. 1184 dated February 10, 2012.

[***] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1192 dated February 10, 2012.

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which obtain in this case, are: (a) when the judgment of the CA is based on a misapprehension of facts or (b) when its findings are not sustained by the evidence on record.

2. POLITICAL LAW; PUBLIC LAND ACT; PROVISIONS ON THE CLASSIFICATION AND DISPOSITION OF LANDS OF THE PUBLIC DOMAIN.— The PLA governs the classification and disposition of lands of the public domain. Under Section 11 thereof, one of the modes of disposing public lands suitable for agricultural purposes is by "confirmation of imperfect or incomplete titles". On the other hand, Section 48 provides the grant to the qualified possessor of an alienable and disposable public land. x x x Notably, the first PLA, or Act No. 926, required a possession and occupation for a period of ten (10) years prior to the effectivity of Act No. 2096 on July 26, 1904 or on July 26, 1894. This was adopted in the PLA until it was amended by Republic Act No. 1942 on June 22, 1957, which provided for a period of thirty (30) years. It was only with the enactment of P.D. No. 1073 on January 25, 1977 that it was required that possession and occupation should commence on June 12, 1945.

3. ID.; PROPERTY REGISTRATION DECREE (PD NO. 1529); ALIENABLE AND DISPOSABLE LAND DISTINGUISHED FROM PRIVATE PROPERTY BY INAPPLICABILITY OF PRESCRIPTION TO THE FORMER.— P.D. No. 1529, which was enacted on June 11, 1978, codified all the laws relative to the registration of property. x x x Section 14 (1) [thereof] covers "alienable and disposable land" while Section 14 (2) covers "private property". As this Court categorically stated in *Heirs of Malabanan v. Republic of the Philippines*, the distinction between the two provisions lies with the inapplicability of prescription to alienable and disposable lands. x x x Property is either part of the public domain or privately owned. Article 420 of the Civil Code, [enumerates the properties of public domain.] x x x All other properties of the State, which is not of the character mentioned in Article 420 is patrimonial property, hence, susceptible to acquisitive prescription.

4. ID.; ID.; ID.; ALIENABLE AND DISPOSABLE LAND CONVERTED TO PRIVATE PROPERTY THRU PRESCRIPTION REQUIRES EXPRESS DECLARATION THAT THE PROPERTY IS NO LONGER INTENDED FOR

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PUBLIC SERVICE OR DEVELOPMENT OF NATIONAL WEALTH.— In *Heirs of Malabanan*, this Court ruled that possession and occupation of an alienable and disposable public land for the periods provided under the Civil Code do not automatically convert said property into private property or release it from the public domain. There must be an express declaration that the property is no longer intended for public service or development of national wealth. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the State, and thus, may not be acquired by prescription.

5. ID.; ID.; ID.; ID.; ACQUISITIVE PRESCRIPTION THEREOF; POSSESSION BEFORE PROPERTY WAS CLASSIFIED AS PATRIMONIAL, NOT INCLUDED.— For one to invoke the provisions of Section 14 (2) and set up acquisitive prescription against the State, it is primordial that the status of the property as patrimonial be first established. Furthermore, the period of possession preceding the classification of the property as patrimonial cannot be considered in determining the completion of the prescriptive period.

6. ID.; ID.; ID.; ID.; ID.; ID.; POSSESSION AND OCCUPATION REQUIRED TO ACQUIRE PUBLIC LAND DISTINGUISHED FROM POSSESSION FOR PURPOSES OF PRESCRIPTION.— It is explicit under Section 14 (1) that the possession and occupation required to acquire an imperfect title over an alienable and disposable public land must be "open, continuous, exclusive and notorious" in character. In *Republic of the Philippines v. Alconaba*, this Court explained that the intent behind the use of "possession" in conjunction with "occupation" is to emphasize the need for actual and not just constructive or fictional possession. x x x On the other hand, Section 14 (2) is silent as to the required nature of possession and occupation, thus, requiring a reference to the relevant provisions of the Civil Code on prescription. And under Article 1118 thereof, possession for purposes of prescription must be "in the concept of an owner, public, peaceful and uninterrupted".

7. ID.; ID.; ID.; ID.; ID.; ID.; TAX DECLARATIONS MUST BE SUPPORTED WITH OTHER EVIDENCE TO QUALIFY AS COMPETENT PROOF OF ACTUAL POSSESSION AND

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OCCUPATION.— Tax Declaration x x x for a claimed possession of and for more than forty-six (46) years (1948-1994) do not qualify as competent evidence of actual possession and occupation. x x x The phrase "adverse, continuous, open, public, and in concept of owner," by which the respondent describes its possession and that of its predecessors-in-interest is a conclusion of law. x x x A person who seeks the registration of title to a piece of land on the basis of possession by himself and his predecessors-in-interest must prove his claim by clear and convincing evidence, *i.e.*, he must prove his title and should not rely on the absence or weakness of the evidence of the oppositors. x x x In *Cequeña v. Bolante*, this Court ruled that it is only when these tax declarations are coupled with proof of actual [public and adverse] possession of the property that they may become the basis of a claim of ownership.

8. ID.; ID.; APPLICATION FOR REGISTRATION OF LAND FILED AFTER ONLY FOUR YEARS FROM THE TIME THE SUBJECT PROPERTY MAY BE CONSIDERED PATRIMONIAL BY REASON OF DAR'S OCTOBER 26, 1990 ORDER SHOWS LACK OF POSSESSION FOR THE PRESCRIPTIVE PERIOD.— The respondent's application was filed after only four years from the time the subject property may be considered patrimonial by reason of the DAR's October 26, 1990 Order shows lack of possession whether for ordinary or extraordinary prescriptive period. The principle enunciated in *Heirs of Malabanan* [applies:] x x x the thirty (30)-year period of prescription for purposes of acquiring ownership and registration of public land under Section 14 (2) of P.D. No. 1529 only begins from the moment the State expressly declares that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jaime Y. Sindiong for respondent.

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D E C I S I O N

REYES, *J.*:

This Court is urged to review and set aside the July 31, 2008 Decision[1] and February 20, 2009 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 00143. In its July 31, 2008 Decision, the CA affirmed the August 27, 2004 Decision of the Regional Trial Court (RTC), Branch 40 of Cagayan De Oro City. The dispositive portion thereof states:

> **WHEREFORE**, premises foregoing, the instant appeal is hereby **DISMISSED** for lack of merit. The assailed Decision dated August 27, 2004 is hereby **AFFIRMED *in toto***.
>
> **SO ORDERED**.[3]

In its February 20, 2009 Resolution, the CA denied the petitioner's August 29, 2008 Motion for Reconsideration.[4]

The Factual Antecedents

The respondent filed with the RTC an application for land registration, covering a parcel of land identified as Lot 9039 of Cagayan Cadastre, situated in El Salvador, Misamis Oriental and with an area of 9,794 square meters. The respondent purchased the portion of the subject property consisting of 4,708 square meters (Area A) from Francisca Oco pursuant to a Deed of Absolute Sale dated November 27, 1990 and the remaining portion consisting of 5,086 square meters (Area B) from Rosario U. Tan Lim, Nemesia Tan and Mariano U. Tan pursuant to a Deed of Partial Partition with Deed of Absolute Sale dated April 11, 1991. It was claimed that the respondent's predecessors-in-interest had

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[1] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Michael P. Elbinias and Ruben C. Ayson, concurring; *rollo*, pp. 43-54.

[2] *Id.* at 56.

[3] *Id.* at 54.

[4] *Id.* at 57-61.

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been in open, notorious, continuous and exclusive possession of the subject property since June 12, 1945.

After hearing the same on the merits, the RTC issued on August 27, 2004 a Decision, granting the respondent's petition for registration of the land in question, thus:

> ACCORDINGLY, finding the application meritorious, and pursuant to applicable law and jurisprudence on the matter, particularly the provisions of P.D. 1529, judgment is hereby rendered granting the instant application. The Land Registration Authority is hereby ordered to issue a decree in the name of the applicant EAST SILVERLANE REALTY DEVELOPMENT CORPORATION covering the parcel of land, Lot 9039, Cad 237, having an area of 9,794 square meters covered by the two (2) tax declarations subject of this petition. Based on the decree, the Register of Deeds for the Province of Misamis Oriental is hereby directed to issue an original certificate of title in the name of the applicant covering the land subject matter of this application.[5]

On appeal by the petitioner, the CA affirmed the RTC's August 27, 2004 Decision. In its July 31, 2008 Decision,[6] the CA found no merit in the petitioner's appeal, holding that:

> It is a settled rule that an application for land registration must conform to three requisites: (1) the land is alienable public land; (2) the applicant's open, continuous, exclusive and notorious possession and occupation thereof must be since June 12, 1945, or earlier; and (3) it is a *bona fide* claim of ownership.
>
> In the case at bench, petitioner-appellee has met all the requirements. Anent the first requirement, both the report and certification issued by the Department of Environment and Natural Resources (DENR) shows that the subject land was within the alienable and disposable zone classified under BF Project [N]o. 8 Blk. I, L.C. Map [N]o. 585 and was released and certified as such on December 31, 1925.
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> Indubitably, both the DENR certification and report constitute a positive government act, an administrative action, validly classifying

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[5] *Id.* at 108-109.

[6] *Supra* note 1.

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the land in question. It is a settled rule that the classification or re-classification of public lands into alienable or disposable, mineral or forest land is now a prerogative of the Executive Department of the government. Accordingly, the certification enjoys a presumption of regularity in the absence of contradictory evidence. As it is, the said certification remains uncontested and even oppositor-appellant Republic itself did not present any evidence to refute the contents of the said certification. Thus, the alienable and disposable character of the subject land certified as such as early as December 31, 1925 has been clearly established by the evidence of the petitioner-appellee.

Anent the second and third requirements, the applicant is required to prove his open, continuous, exclusive and notorious possession and occupation of the subject land under a *bona fide* claim of ownership either since time immemorial or since June 12, 1945.

x x x x x x x x x

In the case at bench, ESRDC tacked its possession and occupation over the subject land to that of its predecessors-in-interest. Copies of the tax declarations and real property historical ownership pertaining thereto were presented in court. A perusal of the records shows that in 1948, a portion of the subject land was declared under the name of Agapito Claudel. Subsequently, in 1957 until 1991 the same was declared under the name of Francisca Oco. Thereafter, the same was declared under the name of ESRDC. A certification was likewise issued by the Provincial Assessor of Misamis Oriental that previous tax declarations pertaining to the said portion under the name of Agapita Claudel could no longer be located as the files were deemed lost or destroyed before World War II.

On the other hand, the remaining portion of the said land was previously declared in 1948 under the name of Jacinto Tan Lay Cho. Subsequently, in 1969 until 1990, the same was declared under the name of Jacinto Tan. Thereafter, the same was declared under the name of ESRDC. A certification was likewise issued by the Provincial Assessor that the files of previous tax declarations under the name of Jacinto Tan Lay Cho were deemed lost or destroyed again before World War II.

In 1991 or upon ESRDC's acquisition of the subject property, the latter took possession thereto. Albeit it has presently leased the said land to Asia Brewery, Inc., where the latter built its brewery

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plant, nonetheless, ESRDC has its branch office located at the plant compound of Asia Brewery, Inc.

Corollarily, oppositor-appellant's contentions that the court *a quo* erred in considering the tax declarations as evidence of ESRDC's possession of the subject land as the latter's predecessors-in-interest declared the same sporadically, is untenable.

It is a settled rule that albeit tax declarations and realty tax payment of property are not conclusive evidence of ownership, nevertheless, they are good *indicia* of the possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's *bona fide* claim of acquisition of ownership.

Finally, it bears stressing that the pieces of evidence submitted by petitioner-appellee are incontrovertible. Not one, not even oppositor-appellant Republic, presented any countervailing evidence to contradict the claims of the petitioners that they are in possession of the subject property and their possession of the same is open, continuous and exclusive in the concept of an owner for over 30 years.

Verily, from 1948 when the subject land was declared for taxation purposes until ESRDC filed an application for land registration in 1995, ESRDC have been in possession over the subject land in the concept of an owner tacking its possession to that its predecessors-in-interest for forty seven (47) years already. Thus, ESRDC was able to prove sufficiently that it has been in possession of the subject property for more than 30 years, which possession is characterized as open, continuous, exclusive, and notorious in the concept of an owner.[7] (citations omitted)

The petitioner assails the foregoing, alleging that the respondent failed to prove that its predecessors-in-interest possessed the

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[7] *Rollo*, pp. 48-54.

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subject property in the manner and for the length of time required under Section 48 (b) of Commonwealth Act No. 141, otherwise known as the "Public Land Act" (PLA), and Section 14 of Presidential Decree No. 1529, otherwise known as the "Property Registration Decree" (P.D. No. 1529). According to the petitioner, the respondent did not present a credible and competent witness to testify on the specific acts of ownership performed by its predecessors-in-interest on the subject property. The respondent's sole witness, Vicente Oco, can hardly be considered a credible and competent witness as he is the respondent's liaison officer and he is not related in any way to the respondent's predecessors-in-interest. That coconut trees were planted on the subject property only shows casual or occasional cultivation and does not qualify as possession under a claim of ownership.

Issue

This Court is confronted with the sole issue of whether the respondent has proven itself entitled to the benefits of the PLA and P.D. No. 1529 on confirmation of imperfect or incomplete titles.

Our Ruling

This Court resolves to **GRANT** the petition.

Preliminarily, with respect to the infirmity suffered by this petition from the standpoint of Rule 45, this Court agrees with the respondent that the issue of whether the respondent had presented sufficient proof of the required possession under a *bona fide* claim of ownership raises a question of fact, considering that it invites an evaluation of the evidentiary record.[8] However, that a petition for review should be confined to questions of law and that this Court is not a trier of facts and bound by the factual findings of the CA are not without exceptions. Among these exceptions, which obtain in this case, are: (a) when the judgment of the CA is based on a misapprehension of facts or (b) when its findings are not sustained by the evidence on record.

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[8] *Republic of the Philippines v. Manna Properties, Inc.*, 490 Phil. 654, 665 (2005).

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This Court's review of the records of this case reveals that the evidence submitted by the respondent fell short of proving that it has acquired an imperfect title over the subject property under Section 48 (b) of the PLA. The respondent cannot register the subject property in its name on the basis of either Section 14 (1) or Section 14 (2) of P.D. No. 1529. It was not established by the required quantum of evidence that the respondent and its predecessors-in-interest had been in open, continuous, exclusive and notorious possession of the subject property for the prescribed statutory period.

The PLA governs the classification and disposition of lands of the public domain. Under Section 11 thereof, one of the modes of disposing public lands suitable for agricultural purposes is by "confirmation of imperfect or incomplete titles."[9] On the other hand, Section 48 provides the grant to the qualified possessor of an alienable and disposable public land. Thus:

SEC. 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

(a) Those who prior to the transfer of sovereignty from Spain to the United States have applied for the purchase, composition or other form of grant of lands of the public domain under the laws and royal decrees then in force and have instituted and prosecuted the proceedings in connection therewith, but have with or without default upon their

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[9] Sec. 11. Public lands suitable for agricultural purposes can be disposed of only as follows, and not otherwise:

(1) For homestead settlement;

(2) By sale;

(3) By lease;

(4) By confirmation of imperfect or incomplete titles;

(a) By judicial legalization;

(b) By administrative legalization (free patent).

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part, or for any other cause, not received title therefor, if such applicants or grantees and their heirs have occupied and cultivated said lands continuously since the filing of their applications.

(b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These 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 the provisions of this chapter.

(c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of the public domain suitable to agriculture, whether disposable or not, under a bona fide claim of ownership for at least 30 years shall be entitled to the rights granted in sub-section (b) hereof.

Presidential Decree No. 1073 (P.D. No. 1073), which was issued on January 25, 1977, deleted subsection (a) and amended subsection (b) as follows:

SECTION 4. The provisions of Section 48 (b) and Section 48 (c), Chapter VIII of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant thru himself or thru his predecessor-in-interest under a bona fide claim of ownership since June 12, 1945.

Notably, the first PLA, or Act No. 926, required a possession and occupation for a period of ten (10) years prior to the effectivity of Act No. 2096 on July 26, 1904 or on July 26, 1894. This was adopted in the PLA until it was amended by Republic Act No. 1942 on June 22, 1957, which provided for a period of thirty (30) years. It was only with the enactment of P.D. No. 1073 on January 25, 1977 that it was required that possession and occupation should commence on June 12, 1945.

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P.D. No. 1529, which was enacted on June 11, 1978, codified all the laws relative to the registration of property. Section 14 thereof partially provides:

Section 14. *Who may apply*. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

(2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.

(4) Those who have acquired ownership of land in any other manner provided for by law.

Section 14 (1) and Section 14 (2) are clearly different. Section 14 (1) covers "alienable and disposable land" while Section 14 (2) covers "private property." As this Court categorically stated in *Heirs of Malabanan v. Republic of the Philippines*,[10] the distinction between the two provisions lies with the inapplicability of prescription to alienable and disposable lands. Specifically:

At the same time, Section 14 (2) puts into operation the entire regime of prescription under the Civil Code, a fact which does not hold true with respect to Section 14 (1).[11]

Property is either part of the public domain or privately owned.[12] Under Article 420 of the Civil Code, the following properties are of public dominion:

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[10] G.R. No. 179987, April 29, 2009, 587 SCRA 172.

[11] *Id.* at 201.

[12] Article 419, Civil Code.

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(a) 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;

(b) 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.

All other properties of the State, which is not of the character mentioned in Article 420 is patrimonial property,[13] hence, susceptible to acquisitive prescription.[14]

In *Heirs of Malabanan*, this Court ruled that possession and occupation of an alienable and disposable public land for the periods provided under the Civil Code do not automatically convert said property into private property or release it from the public domain. There must be an express declaration that the property is no longer intended for public service or development of national wealth. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the State, and thus, may not be acquired by prescription.

Nonetheless, Article 422 of the Civil Code states that "[p]roperty of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State." It is this provision that controls how public dominion property may be converted into patrimonial property susceptible to acquisition by prescription. After all, Article 420 (2) makes clear that those property "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" are public dominion property. **For as long as the property belongs to the State, although already classified as alienable or disposable, it remains property of the public dominion if when it is "intended for some public service or for the development of the national wealth."** (emphasis supplied)

Accordingly, there must be an express declaration by the State that the public dominion property is no longer intended for

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[13] Article 421, Civil Code.

[14] *Supra* note 10, at 202.

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public service or the development of the national wealth or that the property has been converted into patrimonial. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion, pursuant to Article 420(2), and thus incapable of acquisition by prescription. It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the development of the national wealth that the period of acquisitive prescription can begin to run. Such declaration shall be in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law.[15]

In other words, for one to invoke the provisions of Section 14 (2) and set up acquisitive prescription against the State, it is primordial that the status of the property as patrimonial be first established. Furthermore, the period of possession preceding the classification of the property as patrimonial cannot be considered in determining the completion of the prescriptive period.

To prove that its predecessors-in-interest were in possession of the subject property on or prior to June 12, 1945 or had completed the prescriptive period of thirty (30) years, the respondent submitted the following tax declarations:

a) Tax Declaration in the name of Agapita Claudel for the year 1948;

b) Tax Declarations in the name of Francisca Oco for the years 1957, 1963, 1969, 1973, 1974, 1980, 1987, 1989 and 1991;

c) Tax Declarations in the respondent's name for the years 1991, 1992 and 1994;

d) Tax Declarations in the name of Jacinto Tan Lay Cho for the years 1948 and 1952;

e) Tax Declarations in the name of Jacinto Tan for the years 1969, 1973, 1974, 1980, 1989 and 1990; and

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[15] *Id.* at 203.

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f) Tax Declarations in the respondent's name for the years 1991, 1992 and 1994.

Pursuant to Agapita Claudel's 1948 Tax Declaration, there were nineteen (19) coconut and ten (10) banana trees planted on Area A. The coconut trees were supposedly four years old, hence, the reasonable presumption that she had been in possession even before June 12, 1945.[16]

The respondent also offered the following testimony of Vicente Oco:

"Q – Mr. Witness, If you know about what period your predecessor has started to possess this land subject matter of this application?

A – Per my personal knowledge, it was before the second world war but the Municipality of El Salvador was created on June 15, 1948 by virtue of RA 268 and it's started to officially function only on August 2, 1948[.]

Q – From whom did you acquire this information?

A – From the seller and the adjoining lot owners."[17]

To prove that its predecessors-in-interest exercised acts of dominion over the subject property, the respondent claimed that per Francisca Oco's Tax Declarations, the following improvements were introduced in Area A: nineteen (19) coconut and ten (10) banana trees in Area A in 1957 and 1963; thirty-three (33) coconut trees in 1969 and 1973; thirty-three (33) coconut trees, one (1) mango tree and three (3) seguidillas vines in 1974; thirty-three (33) coconut trees in 1980; eighty-seven (87) coconut trees in 1987; and fifteen (15) coconut trees in 1989. Per Jacinto Tan's Tax Declarations, there were fifty-seven (57) coconut trees in Area B in 1973, 1974, 1980, 1989 and 1990.[18]

A reading of the CA's July 31, 2008 Decision shows that it affirmed the grant of the respondent's application given its

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[16] *Rollo*, p. 102.

[17] *Id.* at 102-103.

[18] *Id.* at 99-101.

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supposed compliance with Section 14 (2) of P.D. No. 1529. It ruled that based on the evidence submitted, the respondent is not qualified to register the subject property in its name under Section 14 (1) as the possession and occupation of its predecessors-in-interest commenced after June 12, 1945. Nonetheless, as the CA ruled, the respondent acquired title to the subject property by prescription as its predecessors-in-interest had possessed the subject property for more than thirty (30) years. Citing *Buenaventura v. Republic of the Philippines*,[19] the CA held that even if possession commenced after June 12, 1945, registration is still possible under Section 14 (2) and possession in the concept of an owner effectively converts an alienable and disposable public land into private property.

This Court, however, disagrees on the conclusion arrived at by the CA. On the premise that the application for registration, which was filed in 1995, is based on Section 14 (2), it was not proven that the respondent and its predecessors-in-interest had been in possession of the subject property in the manner prescribed by law and for the period necessary before acquisitive prescription may apply.

While the subject land was supposedly declared alienable and disposable on December 31, 1925 per the April 18, 1997 Certification and July 1, 1997 Report of the Community Environment and Natural Resources Office (CENRO),[20] the Department of Agrarian Reform (DAR) converted the same from agricultural to industrial only on October 16, 1990.[21] Also, it was only in 2000 that the Municipality of El Salvador passed a Zoning Ordinance, including the subject property in the industrial zone.[22] Therefore, it was only in 1990 that the subject property had been declared patrimonial and it is only then that the prescriptive period began to run. The respondent cannot benefit

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[19] G.R. No. 166865, March 2, 2007, 517 SCRA 271.

[20] *Rollo*, p. 142.

[21] *Id.* at 84, 133.

[22] *Id.* at 89-90, 138-140.

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from the alleged possession of its predecessors-in-interest because prior to the withdrawal of the subject property from the public domain, it may not be acquired by prescription.

On the premise that the application of the respondent is predicated on Section 14 (1), the same would likewise not prosper. As shown by the tax declarations of the respondent's predecessors-in-interest, the earliest that the respondent can trace back the possession of its predecessors-in-interest is in 1948. That there were four-year old coconut trees in Area A as stated in Agapita Claudel's 1948 Tax Declaration cannot be considered a "well-nigh controvertible evidence" that she was in possession prior to June 12, 1945 without any evidence that she planted and cultivated them. In the case of Jacinto Tan Lay Cho, the earliest tax declaration in his name is dated 1948 and there is no evidence that he occupied and possessed Area B on or prior to June 12, 1945. Furthermore, the testimony of the respondent's lone witness that the respondent's predecessors-in-interest were already in possession of the subject property as of June 12, 1945 lacks probative value for being hearsay.

It is explicit under Section 14 (1) that the possession and occupation required to acquire an imperfect title over an alienable and disposable public land must be "open, continuous, exclusive and notorious" in character. In *Republic of the Philippines v. Alconaba*,[23] this Court explained that the intent behind the use of "possession" in conjunction with "occupation" is to emphasize the need for actual and not just constructive or fictional possession.

> The law speaks of *possession and occupation*. Since these words are separated by the conjunction *and*, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word *occupation*, it seeks to delimit the all encompassing effect of constructive possession. Taken together with the words open, continuous, exclusive and notorious, the word *occupation* serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. Actual possession of a

[23] 471 Phil. 607 (2004).

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land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property.[24] (citations omitted)

On the other hand, Section 14 (2) is silent as to the required nature of possession and occupation, thus, requiring a reference to the relevant provisions of the Civil Code on prescription. And under Article 1118 thereof, possession for purposes of prescription must be "in the concept of an owner, public, peaceful and uninterrupted." In *Heirs of Marcelina Arzadon-Crisologo v. Rañon*,[25] this Court expounded on the nature of possession required for purposes of prescription:

It is concerned with lapse of time in the manner and under conditions laid down by law, namely, that the possession should be in the concept of an owner, public, peaceful, uninterrupted and adverse. Possession is open when it is patent, visible, apparent, notorious and not clandestine. It is continuous when uninterrupted, unbroken and not intermittent or occasional; exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and notorious when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood. The party who asserts ownership by adverse possession must prove the presence of the essential elements of acquisitive prescription.[26] (citations omitted)

This Court is not satisfied with the evidence presented by the respondent to prove compliance with the possession required either under Section 14 (1) or Section 14 (2).

First, the twelve (12) Tax Declarations covering Area A and the eleven (11) Tax Declarations covering Area B for a claimed possession of more than forty-six (46) years (1948-1994) do not qualify as competent evidence of actual possession and occupation. As this Court ruled in *Wee v. Republic of the Philippines*:[27]

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[24] *Id.* at 620.

[25] G.R. No. 171068, September 5, 2007, 532 SCRA 391.

[26] *Id.* at 404.

[27] G.R. No. 177384, December 8, 2009, 608 SCRA 72.

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It bears stressing that petitioner presented only five tax declarations (for the years 1957, 1961, 1967, 1980 and 1985) for a claimed possession and occupation of more than 45 years (1945-1993). **This type of intermittent and sporadic assertion of alleged ownership does not prove open, continuous, exclusive and notorious possession and occupation.** In any event, in the absence of other competent evidence, tax declarations do not conclusively establish either possession or declarant's right to registration of title.[28] (emphasis supplied and citation omitted)

The phrase "adverse, continuous, open, public, and in concept of owner," by which the respondent describes its possession and that of its predecessors-in-interest is a conclusion of law. The burden of proof is on the respondent to prove by clear, positive and convincing evidence that the alleged possession of its predecessors-in-interest was of the nature and duration required by law.[29] It is therefore inconsequential if the petitioner failed to present evidence that would controvert the allegations of the respondent. A person who seeks the registration of title to a piece of land on the basis of possession by himself and his predecessors-in-interest must prove his claim by clear and convincing evidence, *i.e.*, he must prove his title and should not rely on the absence or weakness of the evidence of the oppositors.[30]

The respondent's claim of ownership will not prosper on the basis of the tax declarations alone. In *Cequeña v. Bolante*,[31] this Court ruled that it is only when these tax declarations are coupled with proof of actual possession of the property that they may become the basis of a claim of ownership.[32] In the

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[28] *Id.* at 83.

[29] See *The Director, Lands Mgt. Bureau v. Court of Appeals*, 381 Phil. 761, 772 (2000).

[30] *Arbias v. Republic of the Philippines*, G.R. No. 173808, September 17, 2008, 565 SCRA 582, 597.

[31] 386 Phil. 419 (2000).

[32] *Id.* at 430.

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absence of actual public and adverse possession, the declaration of the land for tax purposes does not prove ownership.[33]

Second, that the nineteen (19) coconut trees supposedly found on Area A were four years old at the time Agapita Claudel filed a Tax Declaration in 1948 will not suffice as evidence that her possession commenced prior to June 12, 1945, in the absence of evidence that she planted and cultivated them. Alternatively, assuming that Agapita Claudel planted and maintained these trees, such can only be considered "casual cultivation" considering the size of Area A. On the other hand, that Jacinto Tan Lay Cho possessed Area B in the concept of an owner on or prior to June 12, 1945 cannot be assumed from his 1948 Tax Declaration.

Third, that plants were on the subject property without any evidence that it was the respondent's predecessors-in-interest who planted them and that actual cultivation or harvesting was made does not constitute "well-nigh incontrovertible evidence" of actual possession and occupation. As this Court ruled in *Wee*:

> We are, therefore, constrained to conclude that the mere existence of an unspecified number of coffee plants, *sans* any evidence as to who planted them, when they were planted, whether cultivation or harvesting was made or what other acts of occupation and ownership were undertaken, is not sufficient to demonstrate petitioner's right to the registration of title in her favor.[34]

Fourth, Vicente Oco's testimony deserves scant consideration and will not supplement the inherent inadequacy of the tax declarations. Apart from being self-serving, it is undoubtedly hearsay. Vicente Oco lacks personal knowledge as to when the predecessors-in-interest of the respondent started to occupy the subject property and admitted that his testimony was based on what he allegedly gathered from the respondent's predecessors-

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[33] *Id.* at 431.

[34] *Supra* note 27, at 84.

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in-interest and the owners of adjoining lot. Moreover, Vicente Oco did not testify as to what specific acts of dominion or ownership were performed by the respondent's predecessors-in-interest and if indeed they did. He merely made a general claim that they came into possession before World War II, which is a mere conclusion of law and not factual proof of possession, and therefore unavailing and cannot suffice.[35] Evidence of this nature should have been received with suspicion, if not dismissed as tenuous and unreliable.

Finally, that the respondent's application was filed after only four years from the time the subject property may be considered patrimonial by reason of the DAR's October 26, 1990 Order shows lack of possession whether for ordinary or extraordinary prescriptive period. The principle enunciated in *Heirs of Malabanan* cited above was reiterated and applied in *Republic of the Philippines v. Rizalvo*:[36]

> On this basis, respondent would have been eligible for application for registration because his claim of ownership and possession over the subject property even exceeds thirty (30) years. However, it is jurisprudentially clear that the thirty (30)-year period of prescription for purposes of acquiring ownership and registration of public land under Section 14 (2) of P.D. No. 1529 only begins from the moment the State expressly declares that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial.[37]

WHEREFORE, premises considered, the instant petition is **GRANTED**. The July 31, 2008 Decision and February 20, 2009 Resolution of the Court of Appeals in CA-G.R. CV No. 00143 are **REVERSED and SET ASIDE** and the respondent's application for registration of title over Lot 9039 of Cagayan Cadastre is hereby **DENIED** for lack of merit.

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[35] *Supra* note 29, at 770.

[36] G.R. No. 172011, March 7, 2011.

[37] *Id.*

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SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[*] *Perez,* and *Sereno, JJ.,* concur.

SECOND DIVISION

[A.M. No. RTJ-11-2298. February 22, 2012]

ATTY. RENE O. MEDINA and ATTY. CLARITO SERVILLAS, *complainants, vs.* **JUDGE VICTOR A. CANOY, Regional Trial Court, Branch 29, Surigao City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; ADMINISTRATIVE CASE PROPER EVEN IF COMPLAINANT HAS NO CAUSE OF ACTION AGAINST RESPONDENT JUDGE.— In its evaluation, the OCA preliminarily states that in administrative proceedings it is immaterial whether or not the complainant himself or herself has a cause of action against the respondent. x x x To settle the issue on complainant's cause of action, the OCA correctly observed that complainants may file the present administrative complaint against respondent judge. As the Court held in *LBC Bank Vigan Branch v. Guzman,* the objective in administrative cases is the preservation of the integrity and competence of the Judiciary by policing its ranks and enforcing discipline among its erring employees.

2. ID.; ID.; ID.; GROSS IGNORANCE OF THE LAW; PRESENT WHEN JUDGE GRANTED INJUNCTION IN CASE AT BAR

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[*] Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1195 dated February 15, 2012.