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THIRD DIVISION

[G.R. No. 100709. November 14, 1997]

REPUBLIC OF THE PHILIPPINES, represented by the DIRECTOR OF LANDS, *petitioner, vs.* **COURT OF APPEALS, JOSEFINA L. MORATO, SPOUSES NENITA CO and ANTONIO QUILATAN and THE REGISTER OF DEEDS OF QUEZON PROVINCE,** *respondents.*

SYNOPSIS

Respondent Morato's Application for Free Patent was approved and consequently, he was issued an Original Certificate of Title. Both the free patent and the title specifically mandate that the land shall not be alienated nor encumbered within five years from the date of the issuance of the patent. However, it was established that the subject land is a portion of the Calauag Bay, not suitable to vegetation. Moreover, a portion of the land was mortgaged by respondent Morato to respondent spouses Nenita Co and Antonio Quilatan who constructed a house thereon. Another portion of the land was leased to Perfecto Advincula wherein a warehouse was also constructed. On these grounds, petitioner filed a case for the cancellation of Morato's title and reversion of the land to the public domain. After trial, the lower court ruled that there was no violation of the 5-year period ban against alienating or encumbering the land because the land was merely leased and not alienated. It also found that the mortgage to spouses Quilatan covered only the improvement and not the land itself.

Commonwealth Act No. 141, otherwise known as the Public Land Act, proscribes the encumbrance of a parcel of land acquired under a free patent or homestead within five years from the grant of such patent. Furthermore, such encumbrance results in the cancellation of the grant and the reversion of the land to the public domain. It is indisputable that Respondent Morato cannot fully use or enjoy the land during the duration of the lease contract as such contract "impairs the use of the property" by the grantee. The mortgage, on the other hand, constitutes a legal limitation on the estate, and the foreclosure of such mortgage would

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necessarily result in the auction of the property. Even if only part of the property has been sold or alienated within the prohibited period, such alienation is a sufficient cause for the reversion of the whole estate to the State. Moreover, Private Respondent Morato cannot own foreshore land. From the undisputed factual findings of the Court of Appeals, the land has since become foreshore. Accordingly, it can no longer be subject of a free patent under the Public Land Act.

SYLLABUS

1. **CIVIL LAW; LAND TITLES AND DEEDS; COMMONWEALTH ACT NO. 141 (PUBLIC LAND ACT); LAND ACQUIRED UNDER A FREE PATENT; PRESCRIPTION AGAINST ENCUMBRANCE.** — The provisions under Secs. 118, 121, 122 and 124 of the Commonwealth Act No. 141 (Public Land Act) clearly proscribe the encumbrance of a parcel of land acquired under a free patent or homestead within five years from the grant of such patent. Furthermore, such encumbrance results in the cancellation of the grant and the reversion of the land to the public domain. The prohibition against any alienation or encumbrance of the land grant is a proviso attached to the approval of every application. Prior to the fulfillment of the requirements of law, Respondent Morato had only an inchoate right to the property; such property remained part of the public domain and, therefore, not susceptible to alienation or encumbrance. Conversely, when a "homesteader has complied with all the terms and conditions which entitled him to a patent for [a] particular tract of public land, he acquires a vested interest therein and has to be regarded an equitable owner thereof." However, for Respondent Morato's title of ownership over the patented land to be perfected, she should have complied with the requirements of the law, one of which was to keep the property for herself and her family within the prescribed period of five (5) years. Prior to the fulfillment of all requirements of the law, Respondent Morato's title over the property was incomplete. Accordingly, if the requirements are not complied with, the State as the grantor could petition for the annulment of the patent and the cancellation of the title.

2. **ID.; ID.; ID.; "ENCUMBRANCE", DEFINED.**— Encumbrance has been defined as "[a]nything that impairs the use or transfer of property; anything which constitutes a burden on the title; a

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burden or charge upon property; a claim or lien upon property." It may be a "legal claim on an estate for the discharge of which the estate is liable; an embarrassment of the estate or property so that it cannot be disposed of without being subject to it; an estate, interest, or right in lands, diminishing their value to the general owner; a liability resting upon an estate.

3. **ID.; ID.; ID.; ID.; LEASE INCLUDED THEREIN, AND CANNOT BE EXCUSED BY EQUITY.**— Do the contracts of lease and mortgage executed within five (5) years from the issuance of the patent constitute an "encumbrance" and violate the terms and conditions of such patent? It is indisputable that respondent Morato cannot fully use or enjoy the land during the duration of the lease contract. This restriction on the enjoyment of her property sufficiently meets the definition of an encumbrance under Section 118 of the Public Land Act, because such contract "impairs the use of the property" by the grantee. In a contract of lease which is consensual, bilateral, onerous and commutative, the owner temporarily grants the use of his or her property to another who undertakes to pay rent therefor. During the term of the lease, the grantee of the patent cannot enjoy the beneficial use of the land leased. As already observed, the Public Land Act does not permit a grantee of a free patent from encumbering any portion of such land. Such encumbrance is a ground for the nullification of the award. Morato's resort to equity, *i.e.* that the lease was executed allegedly out of the goodness of her heart without any intention of violating the law, cannot help her. Equity, which has been aptly described as "justice outside legality," is applied only in the absence of, and never against, statutory law or judicial rules of procedure. Positive rules prevail over all abstract arguments based on equity *contra legem.*

4. **ID.; ID.; ID.; MORTGAGE INCLUDED.** — The questioned mortgage falls squarely within the term "encumbrance" proscribed by Section 118 of the Public Land Act. Verily, a mortgage constitutes a legal limitation on the estate, and the foreclosure of such mortgage would necessarily result in the auction of the property.

5. **ID.; ID.; ID.; ID.; VIOLATION THEREOF.**— Even if only part of the property has been sold or alienated within the prohibited period of five years from the issuance of the patent, such

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alienation is a sufficient cause for the reversion of the whole estate to the State. As a condition for the grant of a free patent to an applicant, the law requires that the land should not be encumbered, sold or alienated within five years from the issuance of the patent. The sale or the alienation of part of the homestead violates that condition. The prohibition against the encumbrance — lease and mortgage included — of a homestead which, by analogy applies to a free patent, is mandated by the rationale for the grant. Respondent Morato cannot use the doctrine of the indefeasibility of her Torrens title to bar the state from questioning its transfer or encumbrance. The certificate of title issued to her clearly stipulated that its award was "subject to the conditions provided for in Sections 118, 119, 121, 122 and 124 of Commonwealth Act (CA) No. 141." Because she violated Section 118, the reversion of the property to the public domain necessarily follows, pursuant to Section 124.

6. ID.; ID.; ID.; FORESHORE LANDS, NOT INCLUDED.— Private Respondent Morato cannot own foreshore land. The application for a free patent was made in 1972. From the undisputed factual findings of the Court of Appeals, however, the land has since become foreshore. Accordingly, it can no longer be subject of a free patent under the Public Land Act. When the sea moved towards the estate and the tide invaded it, the invaded property became foreshore land and passed to the realm of the public domain. In fact, the Court in *Government vs. Cabangis* annulled the registration of land subject of cadastral proceedings when the parcel subsequently became foreshore land. In another case, the Court voided the registration decree of a trial court and held that said court had no jurisdiction to award foreshore land to any private person or entity. The subject land in this case, being foreshore land, should therefore be returned to the public domain.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Rabendranath Y. Uy for private respondent Josefina L. Morato.

Cristal-Tenorio Law Office for private respondents.

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DECISION

PANGANIBAN, *J.*:

Will the lease and/or mortgage of a portion of a realty acquired through free patent constitute sufficient ground for the nullification of such land grant? Should such property revert to the State once it is invaded by the sea and thus becomes foreshore land?

The Case

These are the two questions raised in the petition before us assailing the Court of Appeals'[1] Decision in CA-G.R. CV No. 02667 promulgated on June 13, 1991 which answered the said questions in the negative.[2] Respondent Court's Decision dismissed[3] petitioner's appeal and affirmed *in toto* the decision of the Regional Trial Court[4] of Calauag, Quezon, dated December 28, 1983 in Civil Case No. C-608. In turn, the Regional Trial Court's decision dismissed petitioner's complaint for cancellation of the Torrens Certificate of Title of Respondent Morato and for reversion of the parcel of land subject thereof to the public domain.

The Facts

The petition of the solicitor general, representing the Republic of the Philippines, recites the following facts:[5]

"Sometime in December, 1972, respondent Morato filed a Free Patent Application No. III-3-8186-B on a parcel of land with an area of 1,265 square meters situated at Pinagtalleran, Calauag, Quezon. On January 16, 1974, the patent was approved and the Register of Deeds

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[1] First Division composed of *J.* Asaali S. Isnani, *ponente;* and *JJ.* Rodolfo A. Nocon and Antonio M. Martinez, concurring.

[2] *Rollo*, pp. 25-32.

[3] *Ibid.*, p. 32.

[4] Branch 63.

[5] Petition, pp. 3-5; *rollo*, pp. 9-11.

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of Quezon at Lucena City issued on February 4, 1974 Original Certificate of Title No. P-17789. Both the free patent and the title specifically mandate that the land shall not be *alienated* nor *encumbered* within five (5) years from the date of the issuance of the patent (Sections 118 and 124 of CA No. 141, as amended).

Subsequently, the District Land Officer in Lucena City, acting upon reports that respondent Morato had encumbered the land in violation of the condition of the patent, conducted an investigation. Thereafter, it was established that the subject land is a portion of the Calauag Bay, five (5) to six (6) feet deep under water during high tide and two (2) feet deep at low tide, and not suitable to vegetation. Moreover, on October 24, 1974, a portion of the land was mortgaged by respondent Morato to respondents Nenita Co and Antonio Quilatan for ₱10,000.00 (pp. 2, 25, Folder of Exhibits). The spouses Quilatan constructed a house on the land. Another portion of the land was leased to Perfecto Advincula on February 2, 1976 at ₱100.00 a month, where a warehouse was constructed.

On November 5, 1978, petitioner filed an amended complaint against respondents Morato, spouses Nenita Co and Antonio Quilatan, and the Register of Deeds of Quezon for the cancellation of title and reversion of a parcel of land to the public domain, subject of a free patent in favor of respondent Morato, on the grounds that the land is a foreshore land and was mortgaged and leased within the five-year prohibitory period (p. 46, Records).

After trial, the lower court, on December 28, 1983, rendered a decision dismissing petitioner's complaint. In finding for private respondents, the lower court ruled that there was no violation of the 5-year period ban against alienating or encumbering the land, because the land was merely leased and not alienated. It also found that the mortgage to Nenita Co and Antonio Quilatan covered only the improvement and not the land itself."

On appeal, the Court of Appeals affirmed the decision of the trial court. Thereafter, the Republic of the Philippines filed the present petition.[6]

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[6] The case was deemed submitted for resolution upon receipt by the Court of Private Respondent Quilatans' Memorandum, dated July 19, 1996, on February 16, 1996. (*Rollo*, p. 143.)

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The Issues

Petitioner alleges that the following errors were committed by Respondent Court:[7]

"I

Respondent Court erred in holding that the patent granted and certificate of title issued to Respondent Morato cannot be cancelled and annulled since the certificate of title becomes indefeasible after one year from the issuance of the title.

II

Respondent Court erred in holding that the questioned land is part of a disposable public land and not a foreshore land."

The Court's Ruling

The petition is meritorious.

First Issue: Indefeasibility of a Free Patent Title

In resolving the first issue against petitioner, Respondent Court held:[8]

"x x x. As ruled in Heirs of Gregorio Tengco *vs.* Heirs of Jose Alivalas, 168 SCRA 198. 'x x x. The rule is well-settled that an original certificate of title issued on the strength of a homestead patent partakes of the nature of a certificate of title issued in a judicial proceeding, as long as the land disposed of is really part of the disposable land of the public domain, and becomes indefeasible and incontrovertible upon the expiration of one year from the date of promulgation of the order of the Director of Lands for the issuance of the patent. (*Republic v. Heirs of Carle*, 105 Phil. 1227 (1959); *Ingaran v. Ramelo*, 107 Phil. 498 (1960); *Lopez v. Padilla*, (G.R. No. L-27559, May 18, 1972, 45 SCRA 44). A homestead patent, one registered under the Land Registration Act, becomes as indefeasible as a Torrens Title. (*Pamintuan v. San Agustin*, 43 Phil. 558 (1982); *El Hogar Filipino v. Olviga*, 60 Phil. 17 (1934); *Duran v. Oliva*, 113 Phil. 144 (1961); *Pajomayo v. Manipon*, G.R. No. L-33676, June 30, 1971, 39 SCRA 676).' (p. 203).

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[7] *Ibid.*, p. 5; *rollo*, p. 11.

[8] Decision, p. 3; *rollo*, p. 27.

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Again, in *Lopez vs. Court of Appeals*, 169 SCRA 271, citing *Iglesia ni Cristo v. Hon. Judge, CFI of Nueva Ecija*, Branch I, (123 SCRA 516 (1983) and *Pajomayo, et al. v. Manipon, et al.* (39 SCRA 676 (1971) held that once a homestead patent granted in accordance with the Public Land Act is registered pursuant to Section 122 of Act 496, the certificate of title issued in virtue of said patent has the force and effect of a Torrens Title issued under the Land Registration Act.

Indefeasibility of the title, however, may not bar the State, thru the Solicitor General, from filing an action for reversion, as ruled in *Heirs of Gregorio Tengo v. Heirs of Jose Aliwalas*, (*supra*), as follows:

> "But, as correctly pointed out by the respondent Court of Appeals, Dr. Aliwalas' title to the property having become incontrovertible, such may no longer be collaterally attacked. If indeed there had been any fraud or misrepresentation in obtaining the title, an action for reversion instituted by the Solicitor General would be the proper remedy (Sec. 101, C.A. No. 141; *Director of Lands v. Jugado*, G.R. No. L-14702, May 21, 1961, 2 SCRA 32; *Lopez v. Padilla*, *supra*).' (p. 204)."

Petitioner contends that the grant of Free Patent (IV-3) 275 and the subsequent issuance of Original Certificate of Title No. P-17789 to Respondent Josefina L. Morato were subject to the conditions provided for in Commonwealth Act (CA) No. 141. It alleges that on October 24, 1974, or nine (9) months and eight (8) days after the grant of the patent, Respondent Morato, in "violation of the terms of the patent, mortgaged a portion of the land" to Respondent Nenita Co, who thereafter constructed a house thereon. Likewise, on February 2, 1976 and "within the five-year prohibitory period," Respondent Morato "leased a portion of the land to Perfecto Advincula at a monthly rent of ₱100.00 who, shortly thereafter, constructed a house of concrete materials on the subject land."[9] Further, petitioner argues that the defense of indefeasibility of title is "inaccurate." The original certificate of title issued to Respondent Morato "contains the seeds of its own cancellation": such certificate specifically states on its face that "it is subject to the provisions of Sections 118, 119, 121, 122, 124 of CA No. 141, as amended."[10]

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[9] Petition, pp. 6-7; *rollo*, pp. 12-13.

[10] *Ibid.*, pp. 11-12; *rollo*, pp. 17-18.

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Respondent Morato counters by stating that although a "portion of the land was previously leased," it resulted "from the fact that Perfecto Advincula built a warehouse in the subject land without [her] prior consent." The mortgage executed over the improvement "cannot be considered a violation of the said grant since it can never affect the ownership."[11] She states further:

"x x x. the appeal of the petitioner was dismissed not because of the principle of indefeasibility of title but mainly due to failure of the latter to support and prove the alleged violations of respondent Morato. The records of this case will readily show that although petitioner was able to establish that Morato committed some acts during the prohibitory period of 5 years, a perusal thereof will also show that what petitioner was able to prove never constituted a violation of the grant."

Respondent-Spouses Quilatan, on the other hand, state that the mortgage contract they entered into with Respondent Morato "can never be considered as [an] 'alienation' inasmuch as the ownership over the property remains with the owner."[13] Besides, it is the director of lands and not the Republic of the Philippines who is the real party in interest in this case, contrary to the provision of the Public Land Act which states that actions for reversion should be instituted by the solicitor general in the name of Republic of the Philippines.[14]

We find for petitioner.

Quoted, below are relevant sections of Commonwealth Act No. 141, otherwise known as the Public Land Act:

"Sec. 118. Except in favor of the Government or any of its branches, units or institutions, or legally constituted banking corporations, *lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of*

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[11] Respondent Morato's Comment, p. 2; *Rollo*, p. 44.

[12] *Ibid.*, pp. 3-4; *Rollo*, pp. 45-46.

[13] Respondents Quilatan's Comment, p. 1; *Rollo*, p. 64.

[14] *Ibid.*, p. 2; *Rollo*, p. 65.

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issuance of the patent or grant nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Natural Resources, which approval shall not be denied except on constitutional and legal grounds. (As amended by Com. Act No. 456, approved June 8, 1939.)"

x x x x x x x x x

"Sec. 121. Except with the consent of the grantee and the approval of the Secretary of Agriculture and Natural Resources, and solely for educational, religious, or charitable purposes or for a right of way, no corporation, association, or partnership may acquire or have any right, title, interest, or property right whatsoever to any land granted under the free patent, homestead, or individual sale provisions of this Act or to any permanent improvement on such land. (As amended by Com. Act No. 615, approved May 5, 1941)

Sec. 122. No land originally acquired in any manner under the provisions of this Act, nor any permanent improvement on such land, shall be encumbered, alienated or transferred, except to persons, corporations, association, or partnerships who may acquire lands of the public domain under this Act or to corporations organized in the Philippines authorized therefore by their charters.

Except in cases of hereditary successions, no land or any portion thereof originally acquired under the free patent, homestead, or individual sale provisions of this Act, or any permanent improvement on such land, shall be transferred or assigned to any individual, nor shall such land or any permanent improvement thereon be leased to such individual, when the area of said land, added to that of his own, shall exceed one hundred and forty-four hectares. *Any transfer, assignment, or lease made in violation hereto shall be null and void.* (As amended by Com. Act No. 615, *Id.*)"

x x x x x x x x x

"Sec. 124. Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of sections *one hundred and eighteen*, one hundred and twenty, one

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hundred and twenty-one, one hundred and twenty-two, and one hundred and twenty-three of this Act *shall be unlawful and null and void from its execution and shall produce the effect of annulling and cancelling the grant, title, patent, or permit originally issued, recognized or confirmed, actually or presumptively, and cause the reversion of the property and its improvements to the State.*" (Italics supplied.)

The foregoing legal provisions clearly proscribe the encumbrance of a parcel of land acquired under a free patent or homestead within five years from the grant of such patent. Furthermore, such encumbrance results in the cancellation of the grant and the reversion of the land to the public domain. Encumbrance has been defined as "[a]nything that impairs the use or transfer of property; anything which constitutes a burden on the title; a burden or charge upon property; a claim or lien upon property." It may be a "legal claim on an estate for the discharge of which the estate is liable; an embarrassment of the estate or property so that it cannot be disposed of without being subject to it; an estate, interest, or right in lands, diminishing their value to the general owner; a liability resting upon an estate."[15] Do the contracts of lease and mortgage executed within five (5) years from the issuance of the patent constitute an "encumbrance" and violate the terms and conditions of such patent? Respondent Court answered in the negative:[16]

"From the evidence adduced by both parties, it has been proved that the area of the portion of the land, subject matter of the lease contract (Exh. 'B') executed by and between Perfecto Advincula and Josefina L. Morato is only 10 x 12 square meters, whereas the total area of the land granted to Morato is 1,265 square meters. It is clear from this that the portion of the land leased by Advincula does not significantly affect Morato's ownership and possession. Above all, the circumstances under which the lease was executed do not reflect a voluntary and blatant intent to violate the conditions provided for in the patent issued in her favor. On the contrary, Morato was compelled to enter into that contract of lease out of sympathy and the goodness of her heart to accommodate a fellow man. x x x"

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[15] Moreno, *Philippine Law Dictionary,* second edition, 1972, pp. 207-208.

[16] CA Decision, p. 6; *Rollo*, p. 30.

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It is indisputable, however, that Respondent Morato cannot fully use or enjoy the land during the duration of the lease contract. This restriction on the enjoyment of her property sufficiently meets the definition of an encumbrance under Section 118 of the Public Land Act, because such contract "impairs the use of the property" by the grantee. In a contract of lease which is consensual, bilateral, onerous and commutative, the owner temporarily grants the use of his or her property to another who undertakes to pay rent therefor.[17] During the term of the lease, the grantee of the patent cannot enjoy the beneficial use of the land leased. As already observed, the Public Land Act does not permit a grantee of a free patent from encumbering any portion of such land. Such encumbrance is a ground for the nullification of the award.

Morato's resort to equity, *i.e.* that the lease was executed allegedly out of the goodness of her heart without any intention of violating the law, cannot help her. Equity, which has been aptly described as "justice outside legality," is applied only in the absence of, and never against, statutory law or judicial rules of procedure. Positive rules prevail over all abstract arguments based on equity *contra legem*.[18]

Respondents failed to justify their position that the mortgage should not be considered an encumbrance. Indeed, we do not find any support for such contention. The questioned mortgage falls squarely within the term "encumbrance" proscribed by Section 118 of the Public Land Act.[19] Verily, a mortgage constitutes a legal limitation on the estate, and the foreclosure of such mortgage would necessarily result in the auction of the property.[20]

Even if only part of the property has been sold or alienated within the prohibited period of five years from the issuance of

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[17] *Lim Si vs. Lim*, 98 Phil. 868, 870, April 25, 1956.

[18] *Causapin vs. Court of Appeals*, 233 SCRA 615, 625, July 4, 1994, citing *Zabat vs. Court of Appeals*, No. L-36958, July 10, 1986, 142 SCRA 587.

[19] *Siy vs. Tan Gun Ga, et al.*, 119 Phil. 676, February 29, 1964.

[20] *Prudential Bank vs. Panis*, 153 SCRA 390, 397, August 31, 1987.

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the patent, such alienation is a sufficient cause for the reversion of the whole estate to the State. As a condition for the grant of a free patent to an applicant, the law requires that the land should not be encumbered, sold or alienated within five years from the issuance of the patent. The sale or the alienation of part of the homestead violates that condition.[21]

The prohibition against the encumbrance — lease and mortgage included — of a homestead which, by analogy applies to a free patent, is mandated by the rationale for the grant, *viz.*:[22]

"It is well-known that the homestead laws were designed to distribute disposable agricultural lots of the State to land-destitute citizens for their home and cultivation. Pursuant to such benevolent intention the State prohibits the sale or encumbrance of the homestead (Section 116) within five years after the grant of the patent. After that five-year period the law impliedly permits alienation of the homestead; but in line with the primordial purpose to favor the homesteader and his family the statute provides that such alienation or conveyance (Section 117) shall be subject to the right of repurchase by the homesteader, his widow or heirs within five years. This Section 117 is undoubtedly a complement of Section 116. It aims to preserve and keep in the family of the homesteader that portion of public land which the State had gratuitously given to him. It would, therefore, be in keeping with this fundamental idea to hold, as we hold, that the right to repurchase exists not only when the original homesteader makes the conveyance, but also when it is made by his widow or heirs. This construction is clearly deducible from the terms of the statute."

By express provision of Section 118 of Commonwealth Act 141 and in conformity with the policy of the law, any transfer or alienation of a free patent or homestead within five years from the issuance of the patent is proscribed. Such transfer nullifies said alienation and constitutes a cause for the reversion of the property to the State.

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[21] *Republic of the Philippines vs. Garcia, et al.*, 105 Phil. 826, May 27, 1959.

[22] *Pascua vs. Talens*, 80 Phil 792, 793-794, April 30, 1948, per Bengzon, *J.*

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The prohibition against any alienation or encumbrance of the land grant is a proviso attached to the approval of every application.[23] Prior to the fulfillment of the requirements of law, Respondent Morato had only an inchoate right to the property; such property remained part of the public domain and, therefore, not susceptible to alienation or encumbrance. Conversely, when a "homesteader has complied with all the terms and conditions which entitled him to a patent for [a] particular tract of public land, he acquires a vested interest therein and has to be regarded an equitable owner thereof."[24] However, for Respondent Morato's title of ownership over the patented land to be perfected, she should have complied with the requirements of the law, one of which was to keep the property for herself and her family within the prescribed period of five (5) years. Prior to the fulfillment of all requirements of the law, Respondent Morato's title over the property was incomplete. Accordingly, if the requirements are not complied with, the State as the grantor could petition for the annulment of the patent and the cancellation of the title.

Respondent Morato cannot use the doctrine of the indefeasibility of her Torrens title to bar the state from questioning its transfer or encumbrance. The certificate of title issued to her clearly stipulated that its award was "subject to the conditions provided for in Sections 118, 119, 121, 122 and 124 of Commonwealth Act (CA) No. 141." Because she violated Section 118, the reversion of the property to the public domain necessarily follows, pursuant to Section 124.

Second Issue: Foreshore Land Reverts to the Public Domain

There is yet another reason for granting this petition.

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[23] *Republic vs. Ruiz*, 23 SCRA 348, 353-354, April 29, 1968.

[24] *Vda. de Delizo vs. Delizo*, 69 SCRA 216, 229, January 30, 1976 citing *Juanico vs. American Land Commercial Company, Inc.*, 97 Phil. 221, *Simmons vs. Wagner*, 10 U.S. 260, 68 C.J.S. 875; *Balboa vs. Farrales*, 51 Phil. 498; *Fiel, et al. vs. Wagas*, 48 O.G., 195, January 9, 1950. SEE *Uy Un vs. Perez and Villaplana*, 71 Phil. 508.

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Although Respondent Court found that the subject land was foreshore land, it nevertheless sustained the award thereof to Respondent Morato:[25]

"First of all, the issue here is whether the land in question, is really part of the foreshore lands. The Supreme Court defines foreshore land in the case of *Republic vs. Alagad*, 169 SCRA 455, 464, as follows:

> 'Otherwise, where the rise in water level is due to, the 'extraordinary' action of nature, rainful, for instance, the portions inundated thereby are not considered part of the bed or basin of the body of water in question. It cannot therefore be said to be foreshore land but land outside of the public dominion, and land capable of registration as private property.
>
> A foreshore land, on the other hand has been defined as follows:
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> > '. . . that part of (the land) which is between high and low water and left dry by the flux and reflux of the tides x x x (*Republic vs. C.A.*, Nos. L-43105, L-43190, August 31, 1984, 131 SCRA 532; *Government vs. Colegio de San Jose*, 53 Phil. 423)
> >
> > The strip of land that lies between the high and low water marks and that is alternatively wet and dry according to the flow of the tide. (*Rep. vs. CA*, *supra*, 539).'

The factual findings of the lower court regarding the nature of the parcel of land in question reads:

> 'Evidence disclose that the marginal area of the land radically changed sometime in 1937 up to 1955 due to a strong earthquake followed by frequent storms eventually eroding the land. From 1955 to 1968, however, gradual reclamation was undertaken by the lumber company owned by the Moratos. Having thus restored the land thru mostly human hands employed by the lumber company, the area continued to be utilized by the owner of the sawmill up to the time of his death in 1965. On or about March 17, 1973, there again was a strong earthquake unfortunately causing destruction to hundreds of residential houses fronting

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[25] CA Decision, pp. 4-5; *Rollo*, pp. 28-29.

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the Calauag Bay including the Santiago Building, a cinema house constructed of concrete materials. The catastrophe totally caused the sinking of a concrete bridge at Sumulong river also in the municipality of Calauag, Quezon.

On November 13, 1977 a typhoon code named 'Unding' wrought havoc as it lashed the main land of Calauag, Quezon causing again great erosion this time than that which the area suffered in 1937. The Court noted with the significance of the newspaper clipping entitled '*Baryo ng Mangingisda Kinain ng Dagat*' (Exh. '11').

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Evidently this was the condition of the land when on or about December 5, 1972 defendant Josefina L. Morato filed with the Bureau of Lands her free patent application. The defendant Josefina Morato having taken possession of the land after the demise of Don Tomas Morato, she introduced improvement and continued developing the area, planted it to coconut trees. Having applied for a free patent, defendant had the land area surveyed and an approved plan (Exh. '9') based on the cadastral survey as early as 1927 (Exh. '10') was secured. The area was declared for taxation purposes in the name of defendant Josefina Morato denominated as Tax Declaration No. 4115 (Exh. '8') and the corresponding realty taxes religiously paid as shown by Exh. '8-A'. (pp. 12-14, DECISION).

Being supported by substantial evidence and for failure of the appellant to show cause which would warrant disturbance, the aforecited findings of the lower court, must be respected."

Petitioner correctly contends, however, that Private Respondent Morato cannot own foreshore land:

"Through the encroachment or erosion by the ebb and flow of the tide, a portion of the subject land was invaded by the waves and sea advances. During high tide, at least half of the land (632.5 square meters) is 6 feet deep under water and three (3) feet deep during low tide. The Calauag Bay shore has extended up to a portion of the questioned land.

While at the time of the grant of free patent to respondent Morato, the land was not reached by the water, however, due to gradual sinking of the land caused by natural calamities, the sea advances had

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permanently invaded a portion of subject land. As disclosed at the trial, through the testimony of the court-appointed commissioner, Engr. Abraham B. Pili, the land was under water during high tide in the month of August 1978. The water margin covers half of the property, but during low tide, the water is about a kilometer (TSN, July 19, 1979, p. 12). Also, in 1974, after the grant of the patent, the land was covered with vegetation, but it disappeared in 1978 when the land was reached by the tides (Exhs. 'E-1'; 'E-14'). In fact, in its decision dated December 28, 1983, the lower court observed that the erosion of the land was caused by natural calamities that struck the place in 1977 (Cf. Decision, pp. 17-18)."[26]

Respondent-Spouses Quilatan argue, however, that it is "unfair and unjust if Josefina Morato will be deprived of the whole property just because a portion thereof was immersed in water for reasons not her own doing."[27]

As a general rule, findings of facts of the Court of Appeals are binding and conclusive upon this Court, unless such factual findings are palpably unsupported by the evidence on record or unless the judgment itself is based on a misapprehension of facts.[28] The application for a free patent was made in 1972. From the undisputed factual findings of the Court of Appeals, however, the land has since become foreshore. Accordingly, it can no longer be subject of a free patent under the Public Land Act. *Government of the Philippine Islands vs. Cabañgis* [29] explained the rationale for this proscription:

"Article 339, subsection 1, of the Civil Code, reads:

'Art. 339. Property of public ownership is —

'1. That devoted to public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, riverbanks, shores, roadsteads, and that of a similar character.'

x x x x x x x x x

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[26] Petition, pp. 12-13; *Rollo*, pp. 18-19.

[27] Respondents Quilatan's Comment, p. 2; *Rollo*, p. 65.

[28] *Valenzuela vs. Court of Appeals,* 253 SCRA 303, 313, February 7, 1996.

[29] 53 Phil. 112, 115-116, March 27, 1929, per Villa-Real, *J.*

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Article 1, case 3, of the Law of Waters of August 3, 1866, provides as follows:

'ARTICLE 1. The following are part of the national domain open to public use:

x x x x x x x x x

'3. The Shores. By the shore is understood that space covered and uncovered by the movement of the tide. Its interior or terrestrial limit is the line reached by the highest equinoctal tides. Where the tides are not appreciable, the shore begins on the land side at the line reached by the sea during ordinary storms or tempests.

In the case of *Aragon vs. Insular Government* (19 Phil. 223), with reference to Article 339 of the Civil Code just quoted, this Court said:

'We should not be understood, by this decision, to hold that in a case of gradual encroachment or erosion by the ebb and flow of the tide, private property may not become 'property of public ownership.' as defined in Article 339 of the code, where it appear that the owner has to all intents and purposes abandoned it and permitted it to be totally destroyed, so as to become a part of the 'playa' (shore of the sea), 'rada' (roadstead), or the like. * * *'

In the *Enciclopedia Juridica Española,* volume XII, page 558, we read the following:

'With relative frequency the opposite phenomenon occurs; that is, the sea advances and private properties are permanently invaded by the waves, and in this case they become part of the shore or beach. They then pass to the public domain, but the owner thus dispossessed does not retain any right to the natural products resulting from their new nature; it is a *de facto* case of eminent domain, and not subject to indemnity.'"

In comparison, Article 420 of the Civil Code provides:

"Art. 420. The following things are property of public dominion:

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

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

When the sea moved towards the estate and the tide invaded it, the invaded property became foreshore land and passed to the realm of the public domain. In fact, the Court in *Government vs. Cabangis*[30] annulled the registration of land subject of cadastral proceedings when the parcel subsequently became foreshore land.[31] In another case, the Court voided the registration decree of a trial court and held that said court had no jurisdiction to award foreshore land to any private person or entity.[32] The subject land in this case, being foreshore land, should therefore be returned to the public domain.

WHEREFORE, the petition is *GRANTED*. This Court hereby *REVERSES* and *SETS ASIDE* the assailed Decision of Respondent Court and *ORDERS* the *CANCELLATION* of Free Patent No. (IV-3) 275 issued to Respondent Morato and the subsequent Original Certificate of Title No. P-17789. The subject land therefore *REVERTS* to the State. No costs.

SO ORDERED.

Romero, Melo and *Francisco, JJ.*, concur.

Narvasa, C.J. (Chairman), on leave.

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[30] *Supra.*

[31] *Ibid.*, p. 119.

[32] *Republic vs. Lozada*, 90 SCRA 503, 510, May 31, 1979.