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accused was ready to present his evidence but the prosecution moved to disqualify him. There was no intended delay in the proceedings, therefore, and the practice sought to be avoided by the rule is inexistent. Consequently, no grave abuse of discretion can be attributed to the Trial Court for having allowed the defense to present its evidence and to participate further in the proceedings "in the interest of justice."

The foregoing conclusion having been arrived at, we find no need to discuss the other issues raised.

ACCORDINGLY, *Certiorari* is GRANTED. The Decision of the Court of Appeals under review is SET ASIDE. The Regional Trial Court, Branch 6, in Malolos, Bulacan, is directed to allow petitioner-accused, Cornelio Godoy, to present his evidence and to participate further in the proceedings in Criminal Case No. 8753-M of his Court.

SO ORDERED.

Melencio-Herrera (Chairperson), Paras, Padilla, Sarmiento, and *Regalado, JJ.*, concur.

FIRST DIVISION

[G.R. No. 81188. August 30, 1988]

TAGUM DOCTORS ENTERPRISES, *petitioner, vs.* **GREGORIO APSAY, THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES, AND THE EXECUTIVE SECRETARY, BUREAU OF LANDS,** *respondents.*

SYLLABUS

1. **CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; ACQUISITION OF PUBLIC LANDS; ONLY BY LEASE; CASE AT BAR.**— The more substantial question, of

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course, is the eligibility of the petitioner to acquire public lands in view of the objection raised by the public respondents on the basis of Article XIV, Section 11, of the 1973 Constitution. This allowed private corporations only to hold by lease (and so impliedly prohibited them from acquiring by purchase or homestead, as in the case of private individuals) lands of the public domain. Significantly, the aforequoted provision is retained with some modification in Article XII, Section 3, of the 1987 Constitution. It is clear that under the provisions of either the 1973 or the 1987 Constitution as prospectively applied the petitioner is absolutely disqualified from purchasing lands of the public domain. Hence, it is not necessary even to resolve the other questions of whether it is permitted to acquire lands under its articles of incorporation or the Corporation Code in general or, even less important, if its treasurer was authorized to file the sales application on its behalf.

2. **ID.; BILL OF RIGHTS; DUE PROCESS; CANNOT BE INVOKED WHERE NO VESTED RIGHT HAS BEEN ACQUIRED; CASE OF *AYOG V. CUSI* (118 SCRA 492) DIFFERENTIATED FROM CASE AT BAR.**— The petitioner insists this provision is not applicable to it as it acquired the lots on June 19, 1972, before the Constitution of 1973 became effective, and it cannot now be deprived of its vested rights over the property by retroactive application of the prohibition. It contends this would violate due process and invokes in support of its contention the case of *Ayog v. Cusi*. That decision is not applicable to the case at bar because it involved a right validly acquired after compliance with all the requirements of the Public Land Act, including the procedure to be observed prior to the public bidding, before the 1973 Constitution became effective. In the present case, the finding of the public respondents was precisely that the sale was invalid because of non-compliance with the requisites for the posting of notices as laid down in the Public Land Act; hence, the petitioner acquired no title under the 1935 Constitution which it can now claim as a vested right. While it is true that due process protects vested rights, and this Court would be the first to stress this basic principle, it is no less true that the guarantee cannot be invoked when, as in the case at bar, no right has been acquired at all because of non-observance of the requirements of the law.

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APPEARANCES OF COUNSEL

Numeriano Tanopo, Jr. for petitioner.
Florante M. de Castro for private respondent.
The Solicitor General for private respondent.

D E C I S I O N

CRUZ, *J.*:

While there are cases where we have reversed the administrative authorities for grave abuse of discretion under Rule 65 of the Rules of Court, the general policy of this Court is to sustain their decisions not only on the basis of the doctrine of separation of powers but also for their presumed knowledgeability, and even expertise, in the laws they are entrusted to enforce. In the case at bar, for reasons that will appear presently, we shall apply the rule rather than the exception.

The relevant facts are as follows:

1. On August 14, 1967, the petitioner corporation, through its treasurer, filed with the Bureau of Lands a Miscellaneous Sales Application covering Lots No. 1277 and 1296 in Magugpo, Tagum, Davao.[1]

2. On June 19, 1972, the said lots were awarded to the petitioner.[2]

3. On September 13, 1972, the private respondent, Gregorio Apsay, filed a formal protest alleging among others that he was the actual possessor of Lot No. 1296.[3]

4. On April 22, 1980, the Director of Lands dismissed Apsay's protest for lack of merit but at the same time canceled

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[1] *Rollo*, p. 45.

[2] *Ibid.*, pp. 32, 49.

[3] *Id.*, p. 45.

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the award in favor of the petitioner on the ground that it was disqualified to acquire public lands under the 1973 Constitution.[4]

5. On June 29, 1987, this decision was affirmed on appeal by the Ministry of Natural Resources.[5]

6. On January 28, 1985, Apsay's motion for reconsideration was denied.[6]

7. On May 22, 1986, acting on Apsay's second motion for reconsideration, the Minister reversed himself and: (a) set aside the decision of the Director of Lands dated April 22, 1980; (b) declared the public bidding over the subject properties null and void; (c) canceled the order of award issued in favor of the petitioner corporation on the ground *inter alia* that it was not qualified to acquire public lands; and (d) directed the rebidding of the land in dispute. Copy of this order was received by the petitioner on May 29, 1986.[7]

8. On August 8, 1986, the petitioner appealed to the Office of the President.[8]

9. On July 24, 1987, its appeal was dismissed by the Deputy Executive Secretary on the ground that it was filed beyond the 30-day reglementary period.[9]

10. On October 5, 1987, the petitioner's motion for reconsideration was denied by the Office of the President.[10]

The petitioner is now before us on *certiorari* to challenge the cancellation of its original award and the dismissal of its appeal to the Office of the President. Specifically, it claims

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[4] *Id.*, pp. 45, 25.

[5] *Id.*, pp. 45, 25-44.

[6] *Id.*, p. 45.

[7] *Id.*, pp. 19-24.

[8] *Id.*, p. 46.

[9] *Id.*, p. 45-47.

[10] *Id* ., p. 92.

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that the public respondents committed grave abuse of discretion in: a) resolving a non-existent second motion for reconsideration filed by the private respondent and thereafter dismissing his appeal for tardiness; and b) canceling the original award in its favor on the ground of invalidity of the sale and its ineligibility to acquire public lands.

First, the procedural grounds.

We see no arbitrariness tainting the factual finding of the Deputy Executive Secretary that there was a second motion for reconsideration filed with the Ministry on February 21, 1985, as this is borne by the records. This motion was denied on May 22, 1986. Assuming, as the petitioner contends, that it did not receive a copy of this second motion, it nevertheless cannot deny that it received a copy of the order of denial and so had all the opportunity to raise its objection in a seasonable appeal. It did not do so until it was too late. As the Office of the President found:

"The records clearly bear that TDEI's counsel received a copy of the MNR's order of May 22, 1986, on May 29, 1986. TDEI, however, filed its notice of appeal only on July 23, 1986, and submitted its appeal memorandum on August 8, 1986. From the time TDEI's counsel received a copy of the said order until he filed the notice of appeal, fifty-four (54) days had already elapsed. The appeal was thus filed beyond the reglementary period of thirty (30) days provided for in Executive Order No. 19, series of 1966, as amended."[11]

The petitioner claims that no second motion for reconsideration is allowed under Administrative Order No. 1, series of 1982, of the Ministry of Natural Resources, and Executive Order No. 19, series of 1966, as amended, (now Administrative Order No. 18, series of 1987) but this too is untenable. A reading of these measures will readily show that the first refers to decisions of the Directors of Lands and the second to decisions of the Office of the President, and that neither of them covers decisions of the Ministry itself. Admission of the second motion for

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[11] *Id.*, p. 46.

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reconsideration was therefore discretionary on the part of the Minister and was in fact in keeping with the general practice and procedure.

The question of improper compliance with the requirements for notice of the public bidding also is a factual issue that this Court is not disposed to review in the absence of any showing that it was arrived at capriciously by the public respondents. On the contrary, we agree that there were really irregularities committed in connection with this matter, as the Minister explained, thus:

"A close scrutiny of the certification issued by the Municipal Treasurer of Tagum, Davao, however, reveals a glaring anomaly in the posting of the questioned notice. FIRST, it is impossible that the said notice could be posted on November 26, 1969 because this notice to be posted was received by the District Land Officer only on December 15, 1969. SECOND, the Municipal Treasurer could not certify that said notice remained so posted until February 12, 1970 because he issued the said certification on January 12, 1970, one month before the expiration of the period of posting."[12]

The more substantial question, of course, is the eligibility of the petitioner to acquire public lands in view of the objection raised by the public respondents on the basis of Article XIV, Section 11, of the 1973 Constitution. This allowed private corporations only to hold by lease (and so impliedly prohibited them from acquiring by purchase or homestead, as in the case of private individuals) lands of the public domain. The provision read in full as follows:

"SEC. 11. The Batasang Pambansa, taking into account conservation, ecological, and developmental requirements of the natural resources, shall determine by law the size of lands of the public domain which may be developed, held or acquired by, or leased to, any qualified individual, corporation, or association, and the conditions therefor. No private corporation or association may hold alienable lands of the public domain except by lease not to exceed one thousand hectares in area; nor may any citizen hold such lands

[12] *Id.*, p. 23.

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by lease in excess of five hundred hectares or acquire by purchase or homestead in excess of twenty-four hectares. No private corporation or association may hold by lease, concession, license, or permit, timber or forest lands and other timber or forest resources in excess of one hundred thousand hectares; however, such area may be increased by the Batasang Pambansa upon recommendation of the National Economic and Development Authority."

The petitioner insists this provision is not applicable to it as it acquired the lots on June 19, 1972, before the Constitution of 1973 became effective, and it cannot now be deprived of its vested rights over the property by retroactive application of the prohibition. It contends this would violate due process and invokes in support of its contention the case of *Ayog v. Cusi*.[13]

In the *Ayog* case, the Biñan Development Corporation was on January 21, 1953, after a valid public bidding awarded a parcel of public land on the basis of its 1951 sales application. On July 18, 1961, it paid in full the purchase price of ₱10,000.00 and on November 10, 1961, a final investigation report was filed in the Bureau of Lands stating that the corporation had complied with the cultivation and payment requirements. However, it was only on August 14, 1975, or thirteen years later, when the sales patent for the land was issued to the corporation, and the question then arose as to whether it was still qualified to receive it under the provisions of the 1973 Constitution which were already in force at that time. Agreeing with the Minister of Natural Resources and the Director of Lands, this Court held "that the said constitutional provision has no retroactive application to the sales application of Biñan Development Co., Inc. because it had already acquired a vested right in the land applied for at the time the 1973 Constitution took effect."

That decision is not applicable to the case at bar because it involved a right validly acquired after compliance with all the requirements of the Public Land Act, including the procedure to be observed prior to the public bidding, before the 1973

[13] 118 SCRA 492.

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Constitution became effective. In the present case, the finding of the public respondents was precisely that the sale was invalid because of non-compliance with the requisites for the posting of notices as laid down in the Public Land Act; hence, the petitioner acquired no title under the 1935 Constitution which it can now claim as a vested right.

It is noteworthy that in the *Ayog* case, both the Bureau of Lands and the Ministry of Natural Resources agreed that the sales patent should issue to the awardee because there was no irregularity whatsoever in the proceedings leading to its grant. By contrast, it is these very same offices that are opposed to the petitioner's claims because of the anomalies noted in the conduct of the public bidding that led to the cancellation of the award.

While it is true that due process protects vested rights, and this Court would be the first to stress this basic principle, it is no less true that the guarantee cannot be invoked when, as in the case at bar, no right has been acquired at all because of non-observance of the requirements of the law.

Significantly, the aforequoted provision is retained with some modification in Article XII, Section 3, of the 1987 Constitution, reading in part as follows:

> "Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead or grant."

It is clear that under the provisions of either the 1973 or the 1987 Constitution as prospectively applied the petitioner is absolutely disqualified from purchasing lands of the public domain.

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Hence, it is not necessary even to resolve the other questions of whether it is permitted to acquire lands under its articles of incorporation or the Corporation Code in general or, even less important, if its treasurer was authorized to file the sales application on its behalf.

To recapitulate, the appeal was properly dismissed by the Office of the President for tardiness. More significant, no vested rights were acquired over the original award in 1972 because it was invalidly granted owing to the demonstrated irregularities attending the public bidding. Indeed, even if such procedural defects were rectified, the award would still be unconstitutional because private corporations are not allowed now to acquire lands of the public domain but may only hold them by lease up to one thousand hectares only and for not more than fifty years in all.

WHEREFORE, the petition is DISMISSED, with costs against the petitioner.

SO ORDERED.

Narvasa, Griño-Aquino, and *Medialdea, JJ.*, concur.

Gancayco, J., on leave.

SECOND DIVISION

[G.R. No. L-29881. August 31, 1988]

HON. ENRICO PALOMAR, *petitioner-appellant, vs.* **COURT OF FIRST INSTANCE OF MANILA, BRANCH XIV and PHILIPPINE REFINING CO., INC.,** *respondents-appellees.*