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SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Vasquez and *Relova, JJ.*, concur.

EN BANC

[G.R. No. L-32521. Sept. 2, 1983]

THE DIRECTOR OF LANDS, petitioner, *vs.* HON. GUARDSON R. LOOD, Judge of the Court of First Instance of Rizal, Branch VI, and the QUEZON CITY DEVELOPMENT AND FINANCING CORPORATION, respondents.

SYLLABUS

LAND REGISTRATION; PUBLIC LAND LAW; JURIDICAL PERSONS DISQUALIFIED TO APPLY FOR REGISTRATION OF TITLE UNDER SECTION 48 (b) THEREOF; CASE AT BAR.— The Supreme Court takes note of the fact that in its application for registration of title, private respondent invoked the provisions of Section 48, Commonwealth Act 141, as amended by Republic Act 107, as amended by Republic Act 1942, and further amended by Republic Act 2061, as the latter itself and its predecessors in interest have been in possession of the land since time immemorial. Applicant-private respondent Quezon City Development and Financing Corporation, being a juridical person, is disqualified to apply subject property for registration under Section 48(b). In G.R. No. L-49623, entitled: Manila Electric Company *vs.* Judge Floreliana Castro-Bartolome, et al., promulgated on June 29, 1982, this Court held that: Because it is still public land and the Meralco, as a juridical person, is disqualified to apply for its registration under Section 48(b), Meralco's application cannot be given due course or has to be dismissed.

TEEHANKEE, *J., dissenting*:

CONSTITUTIONAL LAW; ACQUISITION OF PUBLIC LANDS UNDER THE 1935 CONSTITUTION, ALLOWED.— In line with his consolidated dissenting opinion in the *Iglesia ni Kristo* and *Meralco*

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cases (G.R. No. 55289 and G.R. No. L-49623, both promulgated on June 29, 1982), Justice Teehankee concurs with the dissenting opinion of Justice Makasiar for reexamining the ruling in the aforesaid cases, considering that the acquisition of the small parcels of land therein for well-nigh public purposes was long before the prohibition of the 1973 Constitution and therefore was still governed by the 1935 Constitution which allowed acquisition by corporations of public lands up to 1,024 hectares.

MAKASIAR, *J., dissenting:*

1. CONSTITUTIONAL LAW; TOTAL AND ABSOLUTE BAN OF PRIVATE CORPORATIONS FROM ACQUIRING ALIENABLE PUBLIC LANDS UNDER THE 1973 CONSTITUTION; CANNOT IMPAIR VESTED RIGHT OF APPLICANT AND PREDECESSORS-IN-INTEREST; CASE AT BAR.— The right to apply for a judicial confirmation of an incomplete or imperfect title was already vested prior to the 1973 Constitution as the applicant acquired the same on December 20, 1969. This right long vested in the applicant and its predecessors-in-interest prior to the 1973 Constitution, cannot be impaired by Section 11 of Article XIV of the 1973 Constitution, which totally and absolutely bans private corporations or associations from acquiring alienable lands of the public domain, except by lease not exceeding 1,000 hectares in area. The 1935 Constitution permits such acquisition by private organizations or associations of alienable public lands not exceeding 1,024 hectares in area. The general rule is that constitutional provisions should be given prospective, if not retroactive, effect unless retroactivity is expressly provided or necessarily implied (See Magtoto *vs.* Hon. Manguera, et al., L-37201-02; Simeon, et al. *vs.* Hon. Villaluz, etc., et al., L-37424; People *vs.* Hon. Isnani, etc., et al., L-38929, March 3, 1975, 63 SCRA 4; 16 Am. Jur., 2nd Ed., pp. 283-85; Black's Constitutional Law, 2nd Ed, p. 69). There is nothing in the 1973 Constitution expressly giving retroactive effect to Section 11 of Article XIV thereof. Neither such retroactivity is necessarily implied by the said Section 11 of Article XIV or from any other provisions of the 1973 Constitution. Nor is there any intimation in the journals of the proceedings of the Constitutional Convention of 1971-72 indicating such retroactive effect or any intention to deprive qualified persons, natural and juridical, of any right already vested under the 1935 Constitution and long before January 17, 1973.

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2. CIVIL LAW; PUBLIC LAND ACT; RE-EXAMINATION OF DOCTRINE IN IGLESIA NI KRISTO CASES NEEDED RELATIVE TO CONSTITUTIONALITY OF THE PROHIBITION UNDER SECTION 48 THEREOF; CASE AT BAR.— Where the applicant corporation succeeded to the vested right to apply for a judicial confirmation of an incomplete or imperfect title of its predecessors Amelia del Rosario and Fidel del Rosario who inherited such vested right from their late predecessor, Macario, who owned and possessed the same land since 1892 until he died during the Japanese occupation, the recent case of Meralco *vs.* Judge Floreliana Castro-Bartolome, etc., et al. decided on June 29, 1982 is not decisive of the case at bar; because in the said case, the land was possessed by one Olimpia Ramos before the Pacific War which broke out in 1941 (without specifying the exact date when the possession of Ramos began). On July 3, 1947, Ramos sold the land to the spouses Rafael Piguing and Minerva Inocencio, *who in turn sold the same lot on August 13, 1976 to Meralco,* which filed its application for registration on December 1, 1976. On August 26, 1976, the sale of the Piguing spouses to Meralco and the application of Meralco on December 1, 1976 was effected over three years after the effectivity of the new Constitution which absolutely prohibits private corporations or associations from holding or acquiring alienable land on the public domain except by lease (Section 11, Article XIV, 1973 Constitution). There is then a need for re-examining the doctrine in the cases of Republic *vs.* Honorable Arsenio M. Gonong, etc. and Iglesia ni Kristo, and in Republic *vs.* Judge Villanueva, etc., et al. and Iglesia ni Kristo, etc., considering that the acquisition by the Iglesia was also long before the 1973 Constitution and therefore was still governed by the 1935 Constitution which allowed such acquisition by a qualified juridical entity of an area not exceeding 1,024 hectares (Sec. 2, Art. XIII, 1935 Constitution). In the aforesaid two cases of Iglesia ni Kristo, the constitutional question was not raised and therefore was never discussed. It was assumed all along that the prohibition under Section 48 of the Public Land Act is valid because it was not challenged as unconstitutional under Section 2 of Article XIII of the 1935 Constitution.

DE CASTRO, *J.,*

CONSTITUTIONAL LAW; LIMITED MODE OF ACQUISITION OF PUBLIC AGRICULTURAL LANDS BY QUALIFIED CORPORATIONS; NOT VIOLATIVE OF THE EQUAL PROTECTION CLAUSE.— Granting the right to acquire public

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agricultural lands to qualified corporations as the Constitution of 1935 does to natural persons who are Filipino citizens, does not deprive the legislative body the power to make reasonable classification or distinction as to how such corporations or individual citizens may, respectively, acquire public agricultural lands. Limiting the mode of acquisition by corporations, say by purchase, but not by homestead, free patent or by judicial confirmation of incomplete or imperfect title under Section 48 of the Public Land Act does not offend against the Constitution, particularly the equal protection clause thereof. The basis of the classification is plainly and irrefutably rational and just. Corporations were never intended to acquire public agricultural lands by homestead or free patent. Similarly, neither should there be anything repugnant to the Constitution to limit to natural persons (citizens) the acquisition by judicial confirmation which is nearly akin to that of administrative legalization or by free patent.

MELENCIO-HERRERA, *J., concurring*:

CIVIL LAW; PUBLIC LAND ACT; DISQUALIFICATION OF CORPORATIONS TO ACQUIRE PUBLIC LANDS UNDER SECTION 48(b); NOT A CONTRAVENTION OF THE 1935 CONSTITUTION.— Section 48 (b) of the Public Land Act (CA 141), which was enacted on November 7, 1936, does not contravene the 1935 Constitution. Corporations are artificial beings created by the legislative. "The creation of corporations is exclusively a legislative function" (18 Am. Jur. 2nd p. 574). As products of statutory action, the legislative can define the powers of corporations. Theoretically, the power to own lands can be denied by the legislative to corporations. The provision in the 1935 Constitution that lands of the public domain cannot be disposed of to corporations unless 60% *AT LEAST* of their capital is owned by Filipino citizens is a limitation on the power of the legislative to authorize corporations to acquire lands of the public domain. The legislative may not grant corporations the power to own lands of the public domain; but if corporations are to be granted the power to acquire lands of the public domain, the legislative may require such corporations to be 70% (or more than 60% at least) owned by Filipino citizens. What Section 48(b) of the Public Land Act has done is not to grant corporations the power to acquire lands of the public domain; and that negative, certainly, is not violative of the constitutional limitation.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Arsenio G. Velasquez for private respondent.

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DECISION

RELOVA, *J.*:

Appeal by certiorari from the decision dated August 6, 1970 of the Court of First Instance of Rizal in LRC Case No. N-7078, Rec. No. N-38401, granting the application for registration under Act 496, as amended, of a parcel of land in Malaking Bundok, barrio Dolores, Taytay, Rizal, on the basis of possession by applicant-private respondent Quezon City Development and Financing Corporation and its predecessors since 1892.

Records show that private respondent Quezon City Development and Financing Corporation filed an application on January 13, 1970 with the Court of First Instance of Rizal, seeking the registration of title under Act 496, as amended, claiming to be the owner in fee simple of a parcel of land (Plan Psu-226726) in the sitio of Malaking Bundok, barrio Dolores, municipality of Taytay, province of Rizal, containing an area of 8,840 square meters, with technical descriptions attached to the application, and assessed at ₱260.00.

The applicant, invoking the provisions of Section 48, Commonwealth Act 141, as amended by Republic Act 107, amended by Republic Act 1942, and further amended by Republic Act 2061, claimed that it has acquired said property from Aurelia del Rosario and Fidel del Rosario and that applicant and its predecessors in interest have been in open, exclusive, peaceful, adverse and continuous possession and enjoyment of the same under a *bona fide* claim of ownership since time immemorial.

On July 27, 1970, the Director of Lands, through the Solicitor General, filed an opposition to the application, on the ground that the applicant has no sufficient title to the parcel of land sought to be registered, not having acquired the same either by composition title from the Spanish Government or by possessory information title pursuant to the Royal Decree of February 13, 1894; that applicant and its predecessors have not been in open, continuous, exclusive and notorious possession of the land in

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question for at least thirty years, and that the aforesaid parcel of land is a portion of the public domain belonging to the Republic of the Philippines.

On August 6, 1970, respondent Judge rendered a decision as follows:

"The testimonial and documentary evidence presented has established that the parcel of land in question was formerly owned and possessed by Macario del Rosario since 1892 up to the time of his death during the Japanese Occupation when the same was inherited by Aurelia del Rosario and Fidel del Rosario, from whom the applicant herein acquired it by purchase on December 20, 1969 subject to certain terms and conditions, Exh. 'I'; that the possession of the applicant, together with its predecessors in interest, has been peaceful, continuous, open, exclusive and adverse in the concept of owner since 1892; that the parcel of land classified as 'montañoso' is assessed at ₱260.00 under Tax Declaration No. 5854, Exh. 'G', that tax due for the current year has been paid, Exh. 'H'; that the land is not within any government reservation and is free from all liens and encumbrances, except as to the terms and conditions of the deed of sale entitled 'Bilihang Tuluyan ng Lupa' (Doc. No. 102, Page No. 89, Book No. III, Series of 1969 of Not. Public Arsenio G. Velasquez), Exh. 'I.'

"The applicant, Quezon City Development & Financing Corporation, represented by the Treasurer, Catalina S. Amante, is a corporation duly organized and registered with the Security and Exchange Commission, a 100% Filipino owned corporation with principal offices at 866 Aurora Boulevard Cubao, Quezon City, Exhs. 'J', 'J-1', 'K', 'L.'

"WHEREFORE, finding that the applicant has a registrable title over the parcel of land applied for, Plan Psu-226726 and considering that the applicant, together with its predecessors in interest, has been in open, continuous, peaceful, exclusive and adverse possession of the land in the concept of owners since 1892, this Court hereby confirms the title of the applicant to the parcel of land in question and orders the registration thereof in its name, subject, however, to the reservation of 3.00 meters strip of plan Psu-226726 along Kay Tikling Creek and along the Creek without name to the easement of public use in the interest of navigation, floatage, fishing and salvage.

"Upon this decision becoming final and executory, let the order for the issuance of the decree issue.

"SO ORDERED."

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Petitioner alleged that the lower court erred in ruling that the applicant has registrable title over the parcel of land subject matter of the application based only on ownership through possession allegedly since time immemorial which, as found by the lower court, began in 1892. Further, petitioner argues that the applicant can no longer avail itself of the benefits of Section 47 of Commonwealth Act 141, otherwise known as the Public Land Act, as amended by Republic Act 2061, because its application for registration of title was filed only on January 13, 1970, more than two (2) years after the expiration of Republic Act 2061 on December 31, 1968.

WE find the contention without merit. While it is true that Republic Act 2061 provides that the application for the registration of title expired on December 31, 1968, the period was extended up to December 31, 1976 by Republic Act 6236, which was approved on June 19, 1971, and further extended up to December 31, 1987 by Presidential Decree No. 1073, promulgated on January 25, 1977.

HOWEVER, WE take note of the fact that in its application for registration of title, private respondent invoked the provisions of Section 48, Commonwealth Act 141, as amended by Republic Act 107, as amended by Republic Act 1942, and further amended by Republic Act 2061, as the latter itself and its predecessors in interest have been in possession of the land since time immemorial.

The Public Land Law provides:

"CHAPTER VIII.— *Judicial confirmation of imperfect or incomplete titles.*

". . . . . .

"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:

". . . . . .

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"(b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural land of the public domain, under a *bona fide* claim of acquisition of 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 (As amended by Republic Act No. 1942, approved on June 22, 1957).

". . . . . .

"SEC. 49. No person claiming title to lands of the public domain not in possession of the qualifications specified in the last preceding section may apply for the benefits of this chapter."

Applicant-private respondent Quezon City Development and Financing Corporation, being a juridical person, is disqualified to apply subject property for registration under Section 48(b). In G.R. No. L-49623, entitled: Manila Electric Company *vs.* Judge Floreliana Castro-Bartolome, et al., promulgated on June 29, 1982, this Court held that:

"As between the State and the Meralco, the said land is still public land. It would cease to be public land only upon the issuance of the certificate of title to any Filipino citizen claiming it under Section 48(b). Because it is still public land and the Meralco, as a juridical person, is disqualified to apply for its registration under Section 48(b), Meralco's application cannot be given due course or has to be dismissed."

WHEREFORE, the decision of the lower court dated August 6, 1970, is set aside, and the application for the registration of title filed by applicant-private respondent Quezon City Development and Financing Corporation is hereby DISMISSED.

SO ORDERED.

Aquino, Concepcion, Jr., Guerrero, Plana, Vasquez and *Gutierrez, Jr. JJ.*, concur.

Fernando, C.J., in the result.

Teehankee, J., files a brief dissent, concurring with Justice Makasiar's dissenting opinion.

Makasiar, J., dissents in separate opinion.

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Abad Santos, J., On the sole ground that the Public Land Act does not allow registration except to natural persons, I vote to reverse the decision of the trial court.

De Castro, J., before going on sick leave submitted a separate concurrence herewith enclosed.

Melencio-Herrera, J., Pls. see separate concurrence.

Escolin, J., I reserve my vote.

TEEHANKEE, *J., dissenting*:

In line with my consolidated dissenting opinion in the *Iglesia ni Kristo* and *Meralco* cases (G.R. No. 55289 and G.R. No. L-49623, both promulgated on June 29, 1982), which is hereby reproduced by reference for brevity's sake, I concur with the dissenting opinion of Justice Makasiar, I join his call therein for reexamining the ruling in the aforesaid cases, considering that the acquisition of the small parcels of land therein for well-nigh public purposes was long before the prohibition of the 1973 Constitution and therefore was still governed by the 1935 Constitution which allowed acquisition by corporations of public lands up to 1,024 hectares.

MAKASIAR, *J., dissenting:*

The 1935 Constitution should govern the instant case.

The facts show that the Quezon City Development and Finance Corporation (QCDFC), 100% owned by Filipino citizens, filed on January 13, 1970 an application for registration of title under Act No. 496, as amended, claiming to be the owner of a parcel of land of about 8,840 sq. m. situated in sitio Malaking Bundok, barrio Dolores of Taytay, Rizal, which it purchased on December 20, 1969 from Amelia del Rosario and Fidel del Rosario, who inherited the same from Macario del Rosario, who owned and possessed the said parcel since 1892 until his death during the Japanese occupation; and that its possession, together with that of its predecessors-in-interest, has been peaceful, continuous, open and adverse in concept of an owner also since 1892.

The applicant further prays that, should the application be not favorably considered, he invokes the provisions of Section 48 of

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the Public Land Act, otherwise known as CA No. 141, as amended by R.A. Nos. 107, 1942 and 2061 (pp. 6-7, rec.).

On July 17, 1970, the Director of Lands, through the Solicitor General, filed an opposition on the ground that:

". . . . . .

"2. That neither the applicant(s) nor its predecessors-in-interest possess sufficient title to said parcel(s) of land the same having been acquired by them either by composition title from the Spanish Government or by possessory information title under the Royal Decree of February 13, 1894;

"3. That neither the applicant(s) nor its predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the land in question for at least thirty (30) years immediately preceding the filing of the present application;

"4. That the aforementioned parcel(s) of land is a portion of the public domain belonging to the Republic of the Philippines" (p. 8, rec.).

The decision of the lower court which was promulgated on August 6, 1970 was received on August 14, 1970 by the Solicitor General, who filed the instant petition for review practically reiterating the same grounds of his opposition adding one more ground, thus:

"1. It is admitted that neither the applicant nor its predecessor-in-interest had any title or grant from the Spanish sovereignty -- not even an imperfect or incomplete title -- the only basis of its claim of ownership is possession (since time immemorial) which, however, as found by the lower court, was placed at 1892.

"2. The application for registration of title was filed only on January 13, 1970, long after the expiration of RA 2061 on December 31, 1968. Thus, the applicant can no longer avail of the benefits of Section 47, et seq. of Public Land Act, CA 141, as amended by RA 2061.

"3. On the other hand, the nature of the land applied for as established by the very evidence of the applicant, is that it is "montañoso" and hence, must be presumed to be part of the public domain.

"4. Consequently, the decision subject of this appeal which applied an expired law, was rendered by the Court without jurisdiction and as such, null and void" (p. 4, rec.).

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It should be stressed that the application was filed on January 13, 1970 and the decision of the trial court was rendered on August 6, 1970 -- both before the adoption of the new Constitution on January 17, 1973.

The majority opinion is predicated solely on the fact that under Section 48(b) of CA No. 141, as amended, only a Filipino citizen, not a juridical person, can file an application for a judicial confirmation of an imperfect or incomplete title over alienable public land, relying on Our ruling in the case of Manila Electric Co. *vs.* Judge Floreliana Castro-Bartolome, etc., et al., promulgated on June 29, 1982 (G.R. No. L-49623).

The pertinent provisions of Article XIII of the 1935 Constitution read thus:

"Sec. 1. All agricultural . . . lands of the public domain . . . belong to the State, and *their disposition,* exploitation, development or utilization *shall be limited to* citizens of the Philippines, *or to corporations or associations at least 60% of the capital stock of which is owned by such citizens, subject to any existing right,* grant, lease or concession at the time of the inauguration of the government established under this Constitution. . . . . (Italics supplied.)

"Sec. 2. *No private corporation or association may acquire, lease or hold public agricultural lands in excess of one thousand twenty-four hectares,* nor may any individual acquire such lands by purchase in excess of one hundred forty-four hectares, or by lease in excess of one thousand twenty-four hectares, or by homestead in excess of twenty-four hectares. Lands adapted to grazing, not exceeding two thousand hectares may be leased to an individual, private corporation or association" (italics supplied).

It should be noted from the aforequoted provision of Section 1 of Article XIII of the 1935 Constitution that the disposition, exploitation, development or utilization of agricultural lands of public domain, was limited to Filipino citizens or to corporations or associations at least 60% of the capital stock of which is owned by Filipino citizens.

It should likewise be emphasized that by virtue of the clause "subject to any existing right, grant, lease or concession at the time

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of the inauguration of the government (Commonwealth). . . ." a mining claim of an American corporation already perfected prior to the inauguration of the Commonwealth, was protected against such nationalization provision in the case of Gold Creek Mining Co. *vs.* Rodriguez (66 Phil. 259), even if such perfected mining claim was not yet covered by a torrens title.

It should also be underscored that the aforequoted Section 2 of Article XIII allows a qualified private corporation or association to acquire or hold public agricultural lands of not more than 1,024 hectares in area.

It is therefore patent that the provision of Section 48(b) of C.A. 141, as amended, limiting the acquisition of public agricultural lands only to Filipino citizens was unconstitutional before the effectivity of the 1973 Constitution; because as aforestated the 1935 Constitution does not prohibit qualified corporations or associations from acquiring agricultural lands of the public domain as long as the area does not exceed 1,024 hectares. The area involved in the instant case is only 8,840 sq. m. -- less than a hectare. The 1935 Constitution did not authorize Congress to totally and completely disqualify private corporations to acquire public lands.

The right to apply for a judicial confirmation of an incomplete or imperfect title was already vested prior to the 1973 Constitution as the applicant acquired the same on December 20, 1969. Furthermore, the applicant corporation succeeded to the same vested right of its predecessors Amelia del Rosario and Fidel del Rosario who inherited such vested right from their late predecessor, Macario, who owned and possessed the same land since 1892 until he died during the Japanese occupation.

This right long vested in the applicant and its predecessors-in-interest prior to the 1973 Constitution, cannot be impaired by Section 11 of Article XIV of the 1973 Constitution, which totally and absolutely bans private corporations or associations from acquiring alienable lands of the public domain, except by lease not exceeding 1,000 hectares in area.

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As heretofore stated, the 1935 Constitution permits such acquisition by private organizations or associations of alienable public lands not exceeding 1,024 hectares in area.

The general rule is that constitutional provisions should be given prospective, if not retroactive, effect unless retroactivity is expressly provided or necessarily implied (See Magtoto *vs.* Hon. Manguera, et al., L-37201-02; Simeon, et al. *vs.* Hon. Villaluz, etc., et al., L-37424; People *vs.* Hon. Isnani, etc., et al., L-38929, March 3, 1975, 63 SCRA 4; 16 Am. Jur., 2nd Ed., pp. 283-85; Black's Constitutional Law, 2nd Ed., p. 69).

There is nothing in the 1973 Constitution expressly giving retroactive effect to Section 11 of Article XIV thereof. Neither such retroactivity is necessarily implied by the said Section 11 of Article XIV or from any other provisions of the 1973 Constitution. Nor is there any intimation in the journals of the proceedings of the Constitutional Convention of 1971-72 indicating such retroactive effect or any intention to deprive qualified persons, natural and juridical, of any right already vested under the 1935 Constitution and long before January 17, 1973.

The recent case of Meralco *vs.* Judge Floreliana Castro-Bartolome, etc., et al., decided on June 29, 1982 is not decisive of the case at bar; because in said case, the land was possessed by one Olimpia Ramos before the Pacific War which broke out in 1941 (without specifying the exact date when the possession of Ramos began). On July 3, 1947, Ramos sold the land to the spouses Rafael Piguing and Minerva Inocencio, *who in turn sold the same lot on August 13, 1976 to Meralco,* which filed its application for registration on December 1, 1976. It should be noted that on August 26, 1976, the sale of the Piguing spouses to Meralco and the application of Meralco on December 1, 1976 was effected over three years after the effectivity of the new Constitution which absolutely prohibits private corporations or associations from holding or acquiring alienable land on the public domain except by lease (Sec. 11, Art. XIV, 1973 Constitution).

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In Republic *vs.* Honorable Arsenio M. Gonong, etc. and Iglesia ni Kristo, decided on November 25, 1982, the Iglesia ni Kristo acquired on July 20, 1953 the land of about 922 square meters in Barrio Pinacag, Espiritu, Ilocos Norte from Gregorio Gamet who allegedly possessed the same for more than thirty (30) years. Since 1954, the Iglesia ni Kristo declared the same for taxation purposes, paid the corresponding taxes and built a chapel thereon. On March 17, 1980, the Iglesia applied for the confirmation of its title over the said parcel of land under Section 48[b] of the Public Land Law.

In Republic *vs.* Judge Villanueva, etc., et al. and Iglesia ni Kristo, etc. (G.R. No. 55289, June 29, 1982), the combined area of the lots involved is 313 square meters which lots were acquired on January 9, 1953 by the Iglesia from Andres Perez in exchange for a lot with an area of 247 square meters owned by the said church. Perez have possessed the lot since 1933. After its acquisition of the said two lots, the Iglesia constructed a chapel thereon and declared the same for realty tax purposes. On September 13, 1977, the Iglesia filed an application for registration of the two lots under Section 48[b] of the Public Land Law.

It seems there is a need of re-examining the doctrine in the aforesaid two cases, considering that the acquisition by the Iglesia was also long before the 1973 Constitution and therefore was still governed by the 1935 Constitution which allowed such acquisition by a qualified juridical entity of an area not exceeding 1,024 hectares (Sec. 2, Art. XIII, 1935 Constitution).

It should be stressed that in the aforesaid two cases of Iglesia ni Kristo, the constitutional question was not raised and therefore was never discussed. It was assumed all along that the prohibition under Section 48 of the Public Land Act is valid because it was not challenged as unconstitutional under Section 2 of Article XIII of the 1935 Constitution.

DE CASTRO, *J.*: *concurring opinion*:

I concur. Granting the right to acquire public agricultural lands to qualified corporations as the Constitution of 1935 does to

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natural persons who are Filipino citizens, does not deprive the legislative body the power to make reasonable classification or distinction as to how such corporations or individual citizens may, respectively, acquire public agricultural lands. Limiting the mode of acquisition by corporations, say by purchase, but not by homestead, free patent or by judicial confirmation of incomplete or imperfect title under Sec. 48 of the Public Land Act, as the aforecited Act does, to my mind, does not offend against the Constitution, particularly the equal protection clause thereof. The basis of the classification as indicated is in my opinion plainly and irrefutably rational and just. It seems to me beyond doubt that corporations were never intended to acquire public agricultural lands by homestead or free patent. Similarly, neither should there be anything repugnant to the Constitution to limit to natural persons (citizens) the acquisition by judicial confirmation which is nearly akin to that of administrative legalization or by free patent.

This separate opinion is by way of responding to the dissenting opinion of Justice Makasiar.

MELENCIO-HERRERA, *J., concurring:*

I concur in the judgment. In my opinion, Section 48(b) of the Public Land Act (CA 141), which was enacted on November 7, 1936, does not contravene the 1935 Constitution.

Corporations are artificial beings created by the legislative. "The creation of corporations is exclusively a legislative function" (18 Am. Jur. 2nd, p. 574). As products of statutory action, the legislative can define the powers of corporations. Theoretically, the power to own lands can be denied by the legislative to corporations.

"SEC. 11 - Power to hold real or personal property.— Some power to hold property is an incident of all corporations for business or profit. As to them it exists, expressed or implied, as the necessary means to an end. It does not follow that such a power exists in a public corporation or in a private corporation not for profit, though it may be implied in them as

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a means to the ends for which they exist. Whether it be one or another kind of property or money which is within this power, is not material to the proposition that some such power is generally incident to all private business corporations. The existence of a power is characteristic, but the extent of it is but limitary. Blackstone stated that the power to purchase and hold lands is an inseparable incident of corporate existence, but it is deceptive to take his statement without its context. He states that this power is "consequential" to the power "to grant or receive" by its corporate name, and to "do all other acts as natural persons may". His statement may have been broadly true of all corporations then existing in England of which he knew. *It cannot be true now of all corporations, for some are debarred by law* (charter) *from holding lands"* (1 Fletcher, 1974, Rev. Vol., Sec. 11).

The provision in the 1935 Constitution that lands of the public domain cannot be disposed of to corporations unless 60% *AT LEAST* of their capital is owned by Filipino citizens is a limitation on the power of the legislative to authorize corporations to acquire lands of the public domain. In effect, what the Constitution has said is that (a) since the legislative may or may not grant power to corporations to acquire lands of the public domain; (b) should the legislative grant power to corporations to acquire lands of the public domain, the authorized corporations must be *at least* 60% owned by Filipino citizens. Stated differently, the legislative may not grant corporations the power to own lands of the public domain; but if corporations are to be granted the power to acquire lands of the public domain, the legislative may require such corporations to be 70% (or more than 60% at least) owned by Filipino citizens. What Section 48(b) of the Public Land Act has done is not to grant corporations the power to acquire lands of the public domain; and that negative, certainly, is not violative of the constitutional limitation.

FIRST DIVISION

[G.R. No. L-33929. September 2, 1983]

PHILIPPINE SAVINGS BANK, petitioner, *vs.* HON. GREGORIO T. LANTIN, Presiding Judge, Court of First