THE CONSTITUTIONAL BAN ON LAND ACQUISITION BY ALIENS: ITS PRESENT STATUS

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I. CONSTITUTIONAL PROHIBITION

As a general rule, the 1935 and 1973 Constitutions prohibit aliens from being the transferees or assignees of private land.[1] The only exception under the 1935 Constitution and the original version of the 1973 Constitution is "in cases of hereditary succession." In the 1981 amendments to the 1973 Constitution, however, another exception was added to enable an alien who was formerly a natural-born citizen of the Philippines to be the transferee of private land, for use by him as his residence, as the Batasang Pambansa shall provide.[2]

II. MEANING OF HEREDITARY SUCCESSION

The scope of the term "hereditary succession" is defined by the Supreme Court for the first time in the 1982 case of *Palacios v. Vda. de Ramirez*.[3] In that case, the decedent had willed his estate, the bulk of which consisted of lands and buildings located in Escolta, Manila and in Antipolo, Rizal, as follows: the naked ownership to his two grandnephews; the usufruct of 1/3 to his widow, a French citizen living in Paris; and the usufruct of 2/3 to his companion, an Austrian woman, who lived with him in Spain and was still living there at the time of his death. The two grandnephews sought to have the grant of usufruct over real properties of the estate in favor of the Austrian woman declared null and void for being violative of the constitutional prohibition against the acquisition of lands by aliens. The trial court upheld the validity of the usufruct on the ground that the exception to the prohibition covers not only legal but also testamentary succession. The Supreme Court, speaking through Justice Vicente Abad Santos, held the contrary, stating that the clause "save in cases of hereditary succession" "does not extend to testamentary succession." Otherwise, the Court said, "the prohibition will be for naught and meaningless. Any alien would be able to circumvent the prohibition by

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1 CONST. (1935), Art. XII, Sec. 5; CONST., Art. XIV, Sec. 14.

2 CONST., Art. XIV, Sec. 15.

3 G.R. No. 27952, February 15, 1982; 111 SCRA 704 (1982).

paying money to a Philippine landowner in exchange for a devise of a piece of land."[4]

Notwithstanding its disagreement with the trial court on this point, however, the High Court also upheld the validity of the grant of usufruct in favor of the Austrian woman. It reasoned out that, "usufruct, albeit a real right, does not vest title to the land in the usufructuary and it is the vesting of title to land in favor of aliens which is proscribed by the Constitution."[5]

It seems to us that the holding of the Court that the exception does not extend to testamentary succession is too sweeping. The apprehension expressed by the Court of easy circumvention if the saving clause is stretched to include testamentary succession may be justified in case of a devise to a stranger, i.e., one unrelated to the testator. But there seems to be no logic and sense in prohibiting a person owning land in the Philippines to will that land to his compulsory or legal heirs who, even without a will, are entitled to inherit from him anyway. To do so will in effect take away from the landowner the right to determine the manner and extent of distribution of his property among his legal heirs and force a distribution among them which might well be contrary to his wishes. This is a result that is clearly not intended by the Constitution when it allows devolution of land to foreigners by hereditary succession. It is manifestly absurd for the law to disallow disposition of property by will which it allows when effected without a will. The more rational interpretation, in our view, is to bring within the purview of the term "hereditary succession" testamentary succession by legal heirs, whether compulsory or not.

III. LEGISLATIVE IMPLEMENTATION OF 1981 AMENDMENT

The second exception made in the 1981 amendment in favor of former natural-born citizens is implemented by Batas Pambansa Blg. 185, which was approved and took effect on March 16, 1982.

The Act defines a natural-born citizen in the same manner that the Constitution does, *viz.*, one who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his citizenship.[6]

Under the Act, any natural-born citizen who has lost his Philippine citizenship may, if legally capacitated to enter into a contract under Philippine laws, be a transferee of a private land to be used by him as his residence. The area is, however, limited to a maximum of 1,000 square meters of urban land or one hectare of rural land. In the case of a married couple, each spouse may avail of the privilege but the total area that both can acquire shall not exceed the maximum.[7]

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[4] *Id.* at 712.
[5] *Ibid.*
[6] CONST., Art. III, Sec. 4; B.P. Blg. 185, Sec. 4.
[7] B.P. Blg. 185, Sec. 2.

If before the effectivity of the Act, the Filipino-turned-alien had already acquired urban or rural lands for residential purposes, he shall still be entitled to be a transferee of additional urban or rural lands for residential purposes which, when added to those already owned by him, shall not exceed the maximum areas authorized in the Act.[8]

A transferee under the Act may not acquire more than two lots. These should be situated in different municipalities or cities within the Philippines and their total area shall not exceed 1,000 square meters in the case of urban lands or one hectare in the case of rural lands. If he has already acquired urban land, he shall be disqualified from acquiring rural land, and *vice versa*.[9]

The land is considered urban if comprised within the following areas:

(1) In their entirety, all municipal jurisdictions which, whether or not designated as chartered cities or provincial capitals, have a population density of at least 1,000 persons per square kilometer;
(2) *Poblaciones* or central districts of municipalities and cities which have a population density of at least 500 persons per square kilometer;
(3) Other *poblaciones* or central districts (not included in 1 and 2) which, regardless of population size, have the following: (a) street pattern, i.e., network of streets in at either parallel or right angle orientation; (b) at least six establishments (commercial, manufacturing, recreational and/or personal services); and (c) at least three of the following: (i) a town hall, church or chapel with religious services at least once a month; (ii) a public plaza, park or cemetery; (iii) a market place or building where trading activities are carried on at least once a week; and (iv) a public building like a school, hospital, puericulture and health center or library.
(4) Barangays having at least 1,000 inhabitants which meet the conditions set forth in (3) above, and in which the occupation of the inhabitants is predominantly other than farming or fishing.[10]

The land is deemed rural if it is found in any other area.[11]

When the Act speaks of transfer, it does not refer to a voluntary sale, devise, or donation alone. It includes involuntary sales such as those made on tax delinquency, foreclosure, or execution of judgment.[12]

To effect the transfer the requirements under other laws for the registration of land titles must be complied with. In addition, the transferee

[8] *Ibid.*
[9] *Id.* Sec. 3.
[10] *Id.* Sec. 4.
[11] *Ibid.*
[12] *Id.* Sec. 5.

must submit to the register of deeds of the province or city where the property is located a sworn statement showing the date and place of his birth; the names and addresses of his parents, of his spouse and children, if any; the area, the location and the mode of acquisition of his landholdings in the Philippines, if any; his intention to reside permanently in the Philippines, the date he lost his Philippine citizenship and the country of which he is presently a citizen; and such other information as may be required in the rules and regulations issued by the Minister of Justice to implement the Act.[13]

The Act specifically prohibits the use by the transferee of the lands acquired for any purpose other than for his residence. If he violates this prohibition, he shall be penalized by forfeiture of the lands and their improvements to the national government in escheat proceedings to be instituted by the Solicitor General or his representative. The same penalty is imposed if he fails to reside permanently in the land acquired within two years from the acquisition thereof, unless such failure is caused by *force majeure*. And, in addition to any liability under the Revised Penal Code and deportation in appropriate cases, the same penalty may further be inflicted for any acquisition through fraudulent means or any misrepresentation in the sworn statement required in Section 6 of the Act. He shall, moreover, be forever barred from availing of the privilege granted by the Act.[14]

IV. OTHER EXCEPTIONS TO CONSTITUTIONAL BAN

A. The Rulings

In addition to the two exceptions expressly provided by the Constitution, as amended, the Supreme Court has rendered rulings which in effect establish other exceptions to the prohibition against aliens being transferees of private lands.

The first of these rulings was enunciated in the form of a dictum in 1951 in the case of *Cabauatan et al. v. Uy Hoo et al.*,[15] and established as a doctrine in the subsequent cases of *Rellosa v. Gaw Chee Hun*,[16] *Bautista v. Uy Isabelo*,[17] *Talento v. Makiki*,[18] *Caoile v. Yu Chioa Peng*,[19] *Mercado v. Go Bio*,[20] and *Vasquez v. Li Seng Giap*.[21] It holds that in sales of real estate to aliens incapable of holding title thereto by virtue of the provisions of the Constitution, both the vendor and the vendee are deemed to have

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13 *Id.* Sec. 6.
14 *Id.* Sec. 7.
15 88 Phil. 103 (1951).
16 93 Phil. 827 (1953).
17 93 Phil. 843 (1953).
18 93 Phil. 855 (1953).
19 93 Phil. 861 (1953).
20 93 Phil. 918 (1953).
21 96 Phil. 447 (1955).

committed the constitutional violation and being thus *in pari delicto* the courts will not afford protection to either party.

In adopting this ruling, the majority of the Court was not unmindful of the one important exception to the doctrine of *in pari delicto*, namely, whenever public policy is considered advanced by allowing either party to sue for relief against the transaction. Relying on American authorities, however, it took the stand that not all contracts which are illegal because opposed to public policy come under this exception. It would limit its application to "contracts which are *intrinsically* contrary to public policy—contracts in which the illegality itself consists in their opposition to public policy, and any other species of illegal contracts in which, from their particular circumstances, incidental and collateral motives of public policy require relief."[22] Examples of such contracts are usurious contracts, marriage-brokerage contracts, and gambling contracts.

In the opinion of the Court's majority, a sale of land to an alien does not come within the exception of the doctrine of *in pari delicto* because:

> [I]t is not intrinsically contrary to public policy, nor one where the illegality itself consists in its opposition to public policy. It is illegal not because it is against public policy but because it is against the Constitution. Nor may it be contended that to apply the doctrine of *pari delicto* would be tantamount to contravening the fundamental policy embodied in the constitutional prohibition in that it would allow an alien to remain in the illegal possession of the land, because in this case the remedy is lodged elsewhere. To adopt the contrary view would be merely to benefit petitioner and not to enhance public interest.[23]

The remedy, according to the Court, is for the legislature to approve a law laying down the policy and the procedure to be followed in connection with transactions violative of the constitutional prohibition. And even if such legislative action were not forthcoming, the Court did "not believe that the public interest would suffer thereby if only our executive department would follow a more militant policy in the conservation of our natural resources as ordained by our Constitution."[24] For, the Court pointed out, there are at present two available remedies to the problem: (1) by action for reversion under the Public Land Act,[25] and (2) by escheat to the state. "By following either of these remedies, or by [enacting] an implementary law x x x," concluded the Court, "we can enforce the fundamental policy of our Constitution regarding our natural recources without doing violence to the principle of *pari delicto*."[26]

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[22] *Rellosa v. Gaw Chee Hun, supra,* note 16, at 832.
[23] *Ibid.*
[24] *Id.* at 832-833.
[25] C.A. No. 141, as amended.
[26] *Rellosa v. Gaw Chee Hun, supra,* note 16, at 832 and 835.

In the subsequent case of *Vasquez v. Li Seng Giap*,[27] the Supreme Court likewise refused to apply the constitutional prohibition to a sale made to an alien who resold the land to a Chinese corporation but, after the resale, became a naturalized Filipino, as a consequence of which the corporation to whom he resold the land now became a Filipino corporation. Starting with a restatement of the *Cabauatan* and *Rellosa* ruling that applied the *in pari delicto* doctrine, the Court proceeded to cite a United States jurisprudential holding that:

> [I]n a sale of real estate to an alien disqualified to hold title thereto the vendor divests himself of the title to such real estate and has no recourse against the vendee despite the latter's disability on account of alienage to hold title to such real estate and the vendee may hold it against the whole world except as against the State. It is only the State that is entitled by the procetdings in the nature of *office found* to have a forfeiture or escheat declared against the vendee who is incapable of holding title to the real estate sold and conveyed to him.
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> However, if the State does not commence such proceedings and in the meantime the alien becomes [a] naturalized citizen, the State is deemed to have waived its right to escheat the real property and the title of the alien thereto becomes lawful and valid as of the date of the conveyance to him. The rule in the United States that in a sale of real estate to an alien disqualified to hold title thereto, the vendor divests himself of the title to such real estate and is not permitted to sue for the annulment of his contract, is also the rule under the Civil Code. Article 1302 of the old Civil Code provides: "x x x. Persons *sui juris* cannot, however, avail themselves of the incapacity of those with whom they contracted; x x x."[28]

The Court rejected the argument that if at the time of the conveyance of the real property, the vendee was incapable of holding title to such real estate, the contract of sale was null and void and may be annulled, and his subsequent naturalization as a Filipino cannot retroact to the date of the conveyance to make it lawful and valid. In its view, if the constitutional ban against acquisition of lands by aliens is to preserve the nation's lands for future generations of Filipinos, that aim or purpose would not be thwarted but achieved by making lawful the acquisition of real estate by aliens who have become Filipino citizens by naturalization.

Several objections may be levelled against this sort of reasoning. One is that the Civil Code provision cited as similar to the U.S. rule refers to a voidable contract, whereas a contract violative of the constitutional ban is, as conceded by the Court in its previous decisions, void *ab initio*. The cited Civil Code provision is, therefore, malapropos. Another objection stems from the fact that, under the particular circumstances of this case, the vendee violated the Constitution twice before he became naturalized, once when he purchased the land and its improvements knowing fully well

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[27] *Supra*, note 21.
[28] *Id.*, at 451-452.

that he was disqualified to do so and again when he resold them to a corporation that was not yet Filipino-, but Chinese-controlled and of which he was the controlling stockholder. It was thus obvious that he was not qualified for naturalization for there was incontrovertible evidence that he did not believe in the principles underlying the Constitution (in this case, in the principle of nationalization and conservation of natural resources) and he had not conducted himself in a proper and irreproachable manner.[29] Yet, in holding that his naturalization had legalized the illegal transfer in his favor, the Court did not only implicitly recognize the regularity of his naturalization, but gave premium to the violations of the Constitution he had committed not long before he was naturalized. It does not seem good public policy to overlook and even reward violations of the Constitution simply because the violator has succeeded in having himself naturalized despite questionable qualifications for that purpose and on the pretext that the objective of preserving the nation's lands for Filipinos would not be thwarted but achieved thereby. For the inviolability of the Constitution is no less a matter of public policy; probably, it is the more primordial one. And, furthermore, the objective behind the prohibition would have been no less, if not better, achieved if the Filipino vendor were allowed to recover possession of the land, subject to the consequence of his own violation which may either be an escheat or reversion. Actually, the Court allowed the vendee to profit from his own (two) wrongs when it upheld both the sale in his favor and the resale made by him to his own corporation which was an alien at the time. This, again, is subversive of the basic principle of law and equity that no one should be allowed to profit by his own wrong, a principle that is also dictated by public policy.

None of these objections appears to have ruffled the mind of the members of the Court, for in 1961 a ruling similar to that of *Vasquez v. Li Seng Giap* was made in *Herrera v. Luy Kim Guam*,[29] although no citation was made of the earlier case.

In 1967, however, a fresh wind swept in to stir the settled dust of doctrine in this sanctum of the law. Echoing *Krivenko v. Register of Deeds*,[30] the Court categorically declared in *Philippine Banking Corporation v. Lui She*,[31] that Section 5, Article XIII of the 1935 Constitution "is an expression of public policy to conserve land for the Filipinos." As such a transaction transgressing it is excepted from the *in pari delicto* rule. "That policy," said the Court, "would be defeated and its continued violation sanctioned if, instead of setting the contracts aside and ordering the restoration of the land to the [transferor], this Court should apply the general rule of *pari delicto*."[32] It then expressly consider *pro tanto* quali-

[29] See Rev. Nationalization Law, Sec. 2, 1 SCRA 406 (1961).
[30] 79 Phil. 461 (1947).
[31] G.R. No. L-17587, September 12, 1967, 21 SCRA 52, 65 (1967).
[32] *Id.* at 66.

fied or overruled the ruling in *Rellosa v. Gaw Chee Hun,* and subsequent similar cases. This must necessarily include the *Vasquez v. Li Seng Giap* decision insofar as it adopts the *in pari delicto* ruling in *Rellosa,* etc. and the American ruling divesting the transferor of his title over the land.

Yet, the ruling in *Vasquez* and in *Herrera* was utilized in the 1982 case of *Sarsosa Vda. de Barsobia v. Cuenco,*[33] and in the 1983 case of *Godinez v. Fong Fak Luen,*[34] as a springboard for excluding from the operation of the constitutional ban the situation where land is sold to an alien who later sells it to a Filipino citizen. In the 1982 case of *Sarsosa Vda. de Barsobia v. Cuenco,*[35] a parcel of coconut land was sold by its Filipino owner, the petitioner Epifania Sarsosa vda. de Barsobia, to a Chinese, Ong King Po, in 1936 for ₱1,050. Ong King Po took actual possession and enjoyed the fruits. In 1961 Ong King Po, for the sum of ₱5,000, sold the land to respondent Cuenco, a naturalized Filipino, who actually took possession and gathered the fruits. In 1962 petitioner Epifania took possession of the land and sold one-half thereof to the other petitioner, Pacita Vallar. Epifania claimed that it was not her intention to sell the land to Ong King Po and that she signed the deed of sale merely to evidence her indebtedness to the latter. She had been in possession since then except over the portion sold to Pacita. Respondent Cuenco filed a recovery action but the trial court sustained the petitioners' contention that the sale to Ong King Po, a Chinese, was void *ab initio.* The Court of Appeals, however, reversed the decision of the trial court; hence petitioners brought the matter to the Supreme Court. The Supreme Court conceded that the sale of the land in 1936 by Epifania to Ong King Po was inexistent and void from the beginning for being "a contract executed against the mandatory provision of Section 5, Article XIII of the 1935 Constitution, which is an expression of public policy to conserve lands for the Filipinos."[36] It then went on to state that had the suit been between Epifania and Ong King Po, she could have been declared entitled to the litigated land on the basis of the ruling in *Philippine Banking Corporation v. Lui She,*[37] which allowed recovery by the heirs or successors-in-interest of real estate sold by their predecessor to aliens on the theory that this was excepted under Article 1416 of the Civil Code from the coverage of the *in pari delicto* rule. However, according to the Court, the factual setting had changed; the land being now in the hands of a naturalized Filipino and no longer owned by a disqualified vendee. Hence, applying by analogy the holding in *Vasquez v. Li Seng Giap,*[38] "(t)here would be no more public policy to be served in

[33] G.R. No. L-33048, April 16, 1982, 113 SCRA 547 (1982).
[34] G.R. No. L-36731, January 27, 1983, 120 SCRA 223 (1983).
[35] *Supra,* note 33.
[36] *Id.* at 552.
[37] *Supra,* note 31.

allowing petitioner Epifania to recover the land as it is already in the hands of a qualified person."[39]

Strangely, however, the Court went on to state:

> While, strictly speaking, Ong King Po, private respondent's vendor, had no rights of ownership to transmit, it is likewise inescapable that petitioner Epifania had slept on her rights for 26 years from 1936 to 1962. By her long inaction or inexcusable neglect, she should be held barred from asserting a claim to the litigated property (Sotto vs. Teves, 86 SCRA 157 [1978]).[40]

This holding is entirely inconsistent with the Court's pronouncement that the 1936 sale was inexistent and void from the beginning. For, by express provision of law, the action for declaration of the inexistence of a contract does not prescribe[41] and the right to set up the defense of illegality of the contract cannot be waived.[42] In effect, the Court disregarded these specific provisions and substituted the purely judicial doctrine of laches, a case of repeal by judicial legislation.

In *Godinez, et al. v. Fong Pak Luen*[43] decided only in January 1983, the Court did not find the plaintiffs barred by laches even though the sale to the alien was made in 1941 and the action was filed only in 1966, after 25 years and after the resale of the land in 1963 by the alien to the defendant-appellee, a Filipino who knew fully well that her vendor was a Chinese citizen and hence disqualified to acquire and own a residential land. Instead, the Court categorically held the sale to be void *ab initio* for being violative of the "imperative constitutional policy" embodied in Section 5, Article XIII of the 1935 Constitution, and hence prescription may never be invoked to defend it. This notwithstanding, the Court held that neither could the vendor rely on imprescriptibility of the action to declare the sale void "because the land sold in 1941 is now in the hands of a Filipino citizen against whom the constitutional pr[o]scription was never intended to apply."[44] As precedents, the Court cited *Vasquez v. Li Seng Giap,* and *Herrera v. Luy Kim Guan.*[45] The Court also adverted to *Philippine Banking Corporation v. Lui She*[46] which, in its own words," relaxed the *pari delicto* doctrine to allow the heirs or successors-in-interest, in appropriate cases, to recover that which their predecessors sold to aliens.[46] But the Court declared that the plaintiffs-appellants could not find solace in this decision because of the recent ruling in *Sarsosa,* which involved a factual situation substantially similar to that in the instant case.

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38 *Supra,* note 21.
39 *Supra,* note 33 at 553.
40 *Ibid.*
41 Art. 1410, NEW CIVIL CODE.
42 Art. 1409. NEW CIVIL CODE.
43 *Supra,* note 34.
44 *Id.* at 228.
45 G.R. No. L-17043, January 31, 1961, 1 SCRA 406 (1961).
46 *Supra,* note 31.

Both the *Sarsosa* and *Godinez* rulings were reiterated in *Yap, et al. v. Grageda, et al.*[47] The sale in this case was made on April 12, 1939 when the petitioner vendee was still a Chinese national. He was naturalized as a Filipino after the lapse of nearly fifteen years following the sale. Thereafter, he ceded to his son one of the lots subject of the sale. The trial court voided the sale, holding that the constitutional prohibition is absolute and unqualified and that a conveyance contrary to it would not be validated nor its void nature altered by the subsequent naturalization of the vendee. But the Supreme Court reversed the trial court, quoting its ruling in *Vasquez* and *Sarsosa* that the purpose of the constitutional ban to preserve the nation's lands for future generations of Filipinos "would not be thwarted but achieved by making lawful the acquisition of real estate by aliens who became Filipino citizens by naturalization"— a ruling which, it said, it had only recently reiterated in the *Godinez* case. It is to be noted, however, that the Court did not advert to the existence of laches, which it did in *Sarsosa,* despite the fact that a longer period of time (more than 28 years) had elapsed before the vendee instituted action to have the sale declared null and void.

The *Vasquez* and *Sarsosa* doctrine regarding transfer to a naturalized Filipino was also followed on April 30, 1984 in a case which the Court regarded as involving a similar, but in reality materially different, situation. In this case, *Gerona de Castro v. Tan,*[48] the petitioner sold in 1938 a 1,258 sq. m. lot to Tan Tai, a Chinese. In 1956, Tan Tai died leaving his widow and four children, the respondents in the case. Before Tan Tai's death, one of his sons, Joaquin, became a naturalized Filipino. On November 18, 1962, Tan Tai's heirs executed an extra-judicial settlement of his estate, whereby the lot sold to Tan Tai by the petitioner was allotted to Joaquin. On July 15, 1968, the petitioner filed suit against Tan Tai's heirs to annul the 1938 sale on the ground that it violated the constitutional ban against sale of land to aliens. Sustaining the trial court's order dismissing the suit, the Supreme Court held that "(i)ndependently of the doctrine of *pari delicto,* the petitioner cannot have the sale annulled and recover the lot she herself has sold. While the vendee," the Court continued, "was an alien at the time of the sale, the land has since become the property of Joaquin Teng, a naturalized Philippine citizen, who is constitutionally qualified to own land."[50] Quoting its *Sarsosa* decision, the Court said that there was no more public policy to be served in allowing the petitioner to recover the land and that the policy—to preserve the nation's lands for future generations of Filipinos—would not be thwarted but achieved by making lawful the acquisition of real estate by aliens who have become naturalized Filipinos.

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[47] G.R. No. L-31606, March 28, 1983, 121 SCRA 244 (1983).
[48] G.R. No. L-31956, April 30, 1984, 129 SCRA 85 (1984).
[49] *Gacia, et al. vs. Court of Appeals, et al.,* 130 SCRA 433 (1984).
[50] *Id.,* at 87.

The Court further held that the petitioner's action was barred by laches, she having sold the lot in 1938 and instituted her action to annul the sale only on July 15, 1968. According to it, what it said in *Sarsosa* "applies with equal force to the petitioner" in this case.

B. Summation

The foregoing survey shows that the Court has been somewhat erratic, following a meandering path in its search for a sound interpretation and proper application of the constitutional ban.

In the beginning it took the position, in *Rellosa,* etc., that the constitutional ban does not embody a public policy, hence a sale executed in contravention thereof cannot escape the operation of the *in pari delicto* rule. Then, still reiterating this position, it adopted two additional propositions in *Vasquez,* namely, (1) that the vendee divests himself of the title to the land he sells to an alien and therefore is not permitted to sue for annulment of his contract, and (2) that the constitutional ban can no longer be invoked to void a sale once the alien vendee has become a naturalized citizen, not only because the State is thereby deemed to have waived its right to escheat the property, but also for the reason that the ban's purpose of preserving lands for future generations of Filipions is not thwarted but achieved by making lawful the acquisition of real estate by aliens who have become Filipino citizens by naturalization.

The Court started a turnabout in 1947 when, in the *Krivenko* case, it unequivocably declared that the constitutional ban "is an expression of public policy to conserve land for the Filipinos." But in 1961 it swung back to its earlier decision in *Vasquez* without making any citation.

Surprisingly, probably because of a change in its composition, which now seemed minded to straighten much of the maze in its output, the turnabout it commenced in *Krivenko* was made complete in 1967 in the *Lui She* case. The Court reiterated the *Krivenko* holding that the constitutional ban expresses public policy and held in no uncertain terms that for this reason a transaction transgressing it is not subject to the *in pari delicto* rule; hence the transferor is entitled to restoration of the land conveyed to the alien. It went further by expressly declaring *pro tanto* qualified or overruled the ruling in *Rellosa* and subsequent similar cases. As heretofore stated, the subsequent decisions qualified or overruled necessarily includes *Vasquez* insofar as it restates the *in pari delicto* ruling in *Rellosa* and adopts the American ruling divesting the transferor of his title over the land. It must be stressed that at the time these pronouncements were made in *Lui She,* the Court was deciding every case that came before it *en banc.*

The *Lui She* ruling was not deemed controlling in subsequent cases, however. In the 1982 case of *Sarsosa* and 1983 cases of *Godinez* and *Grageda* the Court continued to pay lip service to the *Krivenko* and *Lui She* recognition of the constitutional prohibition as an expression of public

policy, but opted to apply *Vasquez* in denying the vendee's right to recover the land; it clearly indicated that recovery under the *Lui She* ruling would lie only if the land has not yet been transferred to a naturalized Filipino, for if such transfer has been made, there is no more public policy to be promoted by allowing recovery since the same is already achieved by its transfer to a Filipino. This same ruling in *Vasquez* was further reiterated in the 1984 case of *Gerona de Castro.*

Apart from reiterating *Vasquez, Sarsosa* adds another ground for denying recovery which the Court seems to regard as sufficient even if taken independently of the subsequent transfer of the land to a Filipino citizen. The next succeeding decision in *Godinez,* of course, clearly repudiated the availability of such a ground when it upheld the imprescriptibility of the action to declare null and void a sale made in violation of the constitutional prohibition. And, as already stated, in *Godinez* laches was not utilized as a reason for denying recovery despite the lapse of a period longer than that which separated the sale and the filing of the recovery action in *Sarsosa.* But in the latest (1984) case of *Gerona,* the Court reapplied the doctrine of laches used for the first time in *Sarsosa* in actions for recovery under the constitutional prohibition. This the Court did without any mention of its pronouncements in *Godinez* on imprescriptibility of the action for declaration of nullity, with the ominous implication that laches would bar recovery regardless of the existence of any other ground.

As things stand at the present time, therefore, the position of the Court may be reduced to three propositions:

(i) The constitutional prohibition is an expression of public policy to conserve land for the Filipinos, hence any transaction violative thereof is excepted from the *in pari delicto* rule and the Filipino vendor may recover the land subject of the transaction.

(ii) This notwithstanding, the vendor may recover the land only if the alien vendee has not become a naturalized Filipino or said vendee has not transferred it to a Filipino, natural-born or naturalized.

(iii) In any case, no recovery can be had if the vendor is guilty of laches.

C. Critique

The second and third propositions readily lend themselves to serious objections on legal and policy grounds.

Public policy

Anent the second proposition, it is erroneous to hold that there is no more public policy to be promoted where the alien vendee has become a Filipino by naturalization or has transferred the land to a Filipino, natural-born or naturalized. As may be gleaned from the comments on the *Vasquez* decision, there are at least three fundamental matters of public

policy which it is imperative for the Court, of all institutions, to further, but failed to consider. One is the inviolability of the Constitution, obviously more primordial and much more pervasive and embracing than the mere policy to conserve land for the Filipinos. Another is that which excuses no one from complying with the law. And a third is that which is expressed in the basic principle that no one should be allowed to profit by his own wrong or illegal act.

The Court's holding countenances—more than that, sanctions and validates—a violation of the Constitution. And in the case where, as in *Vasquez*, the vendee later succeeds in having himself naturalized as a Filipino, the Court's ruling does not only permit a violation of the Naturalization Law, but legalizes or validates the illegally obtained naturalization, when what should be done is to order its invalidation through the proper proceedings because the purchase of the land disqualified the alien vendee for naturalization. More than this, the Court's holding allows the alien vendee and his own vendee to profit from their wrongful or illegal acts. In the *Vasquez* case, the Court unwittingly made it possible for the vendee to profit from his three wrongs, namely, the illegal purchase in his favor, the resale made by him to his own corporation which was still alien at the time, and his illegal naturalization. In *Sarsosa,* apart from enjoying the possession and fruits of the land for fifteen years, the alien vendee realized a profit (capital gain) of ₱3,950.00 when he resold the land in 1961. The same may be said of the vendee in *Godinez* who resold the land only after the lapse of twenty-three years to a Filipino who admittedly knew fully well that her vendor was a Chinese citizen and hence disqualified to acquire and own a residential land. Here, not only the Chinese vendee, but his own Filipino vendee was allowed to profit from his own wrongful or illegal act.

This last cited objection points to another objectionable result of the Court's ruling expressed in the second proposition. It validates the title of the alien's Filipino vendee or successor-in-interest despite his bad faith. But even in the absence of bad faith on his part, the title of such vendee or successor-in-interest cannot be held valid under the law. The sale in favor of the alien being void *ab initio,* he could not transmit anything to his vendee. *Nemo dat qui non habet* (No one can give what he has not).[51] The Court itself recognized this in *Sarsosa* when it said: "While, strictly speaking, Ong King Po, private respondent's vendor, *had no rights of ownership to transmit,* it is likewise inescapable that petitioner Epifania had slept on her right for 26 years ...." Furthermore, the alien's vendee (as in *Godinez*) or heir (as in *Gerona*) is his privy with respect to the void contract and as such bound by its consequences. Much earlier, the Court had held that the word "privy" denotes not only the idea of succession in heirship or testamentary legacy, but also succession by virtue of acts *inter*

[51] *Garcia v. Court of Appeals,* G.R. Nos. L-49644-45, July 16, 1984, 130 SCRA 433, 435.

vivos, as by assignment, subrogation, or purchase—in fact any act whereby the successor is substituted in the place of the predecessor-in-interest.[52] It has also enunciated as a principle of law that whoever enters into a contract does so for himself and for his heirs, and the latter as successors to all the rights of the former succeed him also in all his obligations;[53] they cannot be regarded as third parties with respect to a contract to which the deceased was a party, touching his estate—"they take such property subject to all the obligations resting thereon in the hands of him from whom they derive their rights."[54] Such obligation includes that of redelivering the property subject of a valid contract entered into by the predecessor upon demand, judicial or extrajudicial, pursuant to Article 1416 of the Civil Code.

If the Court was not unmindful of these basic principles and rules of law — and, apparently, it was — it was not justified in sacrificing them simply because the lands in question are now in the hands of Filipino citizens or that the policy to conserve lands for Filipinos is already attained. The Court should be the last, if at all or ever, to assert or hold that the end justifies the means. No! In a system of government such as ours, which we claim or profess to be governed by the rule of law, the laws cannot be sacrificed in order to achieve a certain public policy, especially where the law itself has established the procedure for achieving that policy. Here the procedure blazed by law is either restoration of the land to the Filipino vendor or its escheat or reversion.

What is even more deplorable is that the Court had to sacrifice these basic principles and the others adverted to earlier — all of which were adopted by the Court *en banc*—in decisions rendered by a division only. This is violative of the Constitution's mandate that no doctrine or principle of law laid down by the Court in a decision rendered *en banc* or in division may be modified or reversed except by the Court sitting *en banc*.[55] This same mandate is violated when the Court's divisions rendering the questioned decisions distinguish the cases subject thereof from that of *Lui She*, the ruling in which is in effect at least modified thereby.

It seems incumbent upon the Court, considering the nature and importance of these cases, to have at least paid particular attention to the special circumstances attendant to the acquisition of the land by the alien's Filipino vendee or successor-in-interest. We need not rediscuss the situation where, as in *Vasquez*, the alien vendee subsequently got himself naturalized. In the case of *Godinez*, where the Filipino vendee admittedly knew fully well that her vendor was a Chinese citizen and hence disqualified to acquire and own a residential land, the Court should at least have taken note of his bad faith which, pursuant to settled rulings of the Court, would have

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[52] *Alpuerto v. Perez Pastor*, 38 Phil. 785.
[53] *Roxas, et al. v. Mijares*, 9 Phil. 252, 257.
[54] *Mojica v. Fernandez*, 9 Phil. 403; *Estate of Hemandy v. Luzon Surety Co.*,
[55] CONST., Art. X, Sec. 2(3).

prevented him frof acquiring title for not being an innocent purchaser for value. In *Gerona,* what stands out and should have struck the Court's notice is that all the alien vendee's heirs were still Chinese at the time of his death or when his estate was transmitted to them. His son to whom the land illegally bought by him was eventually adjudicated by extrajudicial partition became naturalized only six or more years after his death and it was only after he was naturalized that the partition was made. Did not the Court sense anything suspicious in the land being adjudicated to him by the heirs? It seems clear that there was a design on their part to evade the effects of violation of the constitutional prohibition. But the Court tended to be liberal instead of strict in its application of the constitutional prohibition despite this circumstance.

Far from promoting or achieving the public policy underlying the constitutional ban, the Court's ruling tends to subvert it by encouraging violations of the ban. Under said ruling, the alien vendee would have nothing to lose; he can only profit from the transaction either by simply using or exploiting the land or reselling it, or both, with impunity. It also dangles to the alien vendee the great temptation of looking for and hiring a dummy after acquiring it in order to preclude recovery of the land by the Filipino vendor.

Laches

Anent the third proposition — that no recovery can be had if the Filipino vendor is guilty of laches — it bears repeating that this is inconsistent with the Court's latest position that a sale in violation of the constitutional ban is void *ab initio* since, pursuant to Article 1409 and 1410 of the Civil Code, the action for declaration of the inexistence of a contract does not prescribe and the right to set up its illegality cannot be waived. The Court forgets that laches is a principle of equity and by its own settled doctrine *equity follows the law,*[56] it is "not a legislative power that can surpesede a status."[57] By a mere decision in division, therefore, it has, more than modified, disregarded a settled principle enunciated by it *en banc* and rendered ineffective unequivocal statutory provisions by judicial legislation.

Under this ruling, it is not even necessary that the land has been resold or retransferred by the alien vendee to a Filipino, natural-born or naturalized, to prevent recovery by the Filipino vendor.

Surely, in this instance, the Court cannot say that the constitutional policy to conserve land for Filipinos will not be defeated.

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[56] *Severino v. Severino,* 44 Phil. 343 (1923).

[57] Reyes, *The Trend Toward Equity versus Positive Law in Philippine Jurisprudence,* 58 PHIL. L. J., 133.

V. CONCLUSION

It may be concluded that, on the whole, while the Supreme Court has unduly restricted the meaning of "hereditary succession" as an exception to the constitutional ban, it has eroded the ban by reading additional exceptions not warranted by either the Constitution or the laws and even settled basic principles that it now in effect modifies, reverses or disregards by mere division decisions in contravention of an express mandate of the Constitution.

This makes doubly unfortunate the adoption of another exception by constitutional amendment in favor of former Filipino citizens who are now aliens without regard to their loyalty to the country or without any assurance that they will or are able to contribute to the country's development or welfare.

At the rate the Supreme Court is doing it, the constitutional ban may soon, if it has not yet, become the very rare exception rather than the rule.