PUBLIC LAND GRANTS: THE CONTROVERSY ABOUT A CONSTITUTIONAL SUPERFLUITY*

SALVADOR T. CARLOTA**

I. INTRODUCTION

Early this year, the people were asked to approve or reject four amendments to the 1973 Constitution. These amendments pertain to the election of the members of the Batasang Pambansa by provinces or districts; the establishment of a different mode of presidential succession by restoring the Office of Vice-President; public land grants; and, urban land reform and social housing.

Long before January 27, 1984, the designated day for the Plebiscite, it was already apparent that the first two amendments carried the overwhelming support of the people and that their ratification was a foregone conclusion. But while there was general agreement on the wisdom or desirability of restoring the Office of the Vice-President and the old system of provincial or district representation in the Batasang Pambansa, there were strong objections to the last two amendments on public land grants and urban land reform. Although all four amendments were ultimately ratified by the people, the results of the plebiscite clearly showed that the last two were not as popularly supported as the first two amendments.

For this afternoon's lecture, I propose to focus our attention on the Public Land Grant amendment which, as we all know, spawned a controversy of its own. This amendment was ratified over the vigorous objections of civic and professional organizations, including the Integrated Bar of the Philippines and the voluntary bar associations.

The controversy over this particular amendment could be partly attributed to the insufficiency of public knowledge or information concerning the meaning, nature, and implications of public land grants. This unfortunate lack of understanding over a subject that is not exactly without intricacies, in turn, contributed to the widespread feeling of apprehension among those who opposed the amendment. It was feared that the amendment could be a source of abuse that can adversely affect one of our most vital natural resources.

The time made available for the public to acquire sufficient and relevant information regarding the amendment was a major factor that fueled

---

* First Benjamin M. Gozon Professorial Chair Lecture.

** *Associate Professor of Law*, University of the Philippines; *Holder*, Benjamin M. Gozon Professorial Chair on Natural Resources.

the controversy. Many were of the opinion that the people could not make an intelligent judgment on Plebiscite day since there was not enough time to allow an effective information campaign as well as a thorough exchange of views between the proponents and the objectors. It was precisely because of this that a petition was filed with the Supreme Court a few days before the Plebiscite urging the Court to defer the Plebiscite scheduled on January 27, 1984 on questions 3 and 4 which cover the amendments on public land grants and urban land reform respectively.[1]

The petitioners contended that there was no fair and proper submission to the people of the proposed amendments in accordance with the doctrine enunciated in *Tolentino v. Commission on Elections*.[2] Under this doctrine:

> [I]n order that a plebiscite for the ratification of an amendment to the Constitution may be validly held, it must provide the voter not only sufficient time, but ample basis for an intelligent appraisal of the nature of the amendment *per se* as well as its relation to the other parts of the Constitution with which it has to form a harmonious whole.[3]

The Court was not persuaded that there was insufficient time or that there was no ample basis for an intelligent decision by the people. The petition was dismissed for lack of merit, although there were four members of the Court who filed separate dissenting opinions.

I must stress at this juncture that the Court's ruling was only on the issue of fair and proper submission. The necessity or wisdom of the amendments was not put at issue. Although this is an equally, if not more, important question, it is reserved for the judgment of the people and is a matter that is beyond the authority of the judiciary to resolve.

Now that the people have ratified the Public Land Grant amendment, should this be taken to mean that the amendment is necessary for the State to undertake programs concerning the grant or distribution of lands of the public domain? Or, should the proper interpretation be that despite its ratification, the amendment is nevertheless a superfluity? Stated differently, does the amendment merely serve to confirm an already existing power? Suppose the amendment were rejected, would this mean that the people's judgment was to withdraw the power? Or, should it be taken to mean simply that the people consider the amendment unnecessary and that the power continues to exist? What are public land grants? Do we have such grants under existing legislation? These are some of the questions that this lecture will attempt to answer. Finding the right answers will require not just a review of the history of land grants in the Philippines, but also call for a closer look at the fundamental law, to determine if there is a constitutional foundation or support for public land grants.

---

[1] Almario v. Alba, G.R. No. L-66088, January 25, 1984, 127 SCRA 69 (1984).
[2] G.R. No. L-34150, October 16, 1971, 41 SCRA 702 (1971).
[3] *Id.* at 729.

II. Historical Background

A historical review of land grants necessarily entails a discussion of the development of Philippine land laws. There can be no doubt that for this purpose, the starting point is not the post-American period. Nor could it be the American regime, or even the Spanish era. The logical starting place is pre-Spanish Philipppines. For even before the advent of the Spanish era, land acquisition or distribution was a matter governed by customary law.

It is unfortunate that prior to the coming of the Spaniards, there was no written land law in the Philippines. There was, of course, the Code of Calantiao which, we are told, "is as old as the Code of Manu of India to which it favorably compares in breadth of thought and wisdom."[4] But this Code did not have any provision concerning the acquisition, ownership, alienation, and transfer of land. Considering the importance that people usually accord to land ownership, one may wonder why there was such an omission. But if we could only project ourselves back into the remote past, long before that fateful day in March 1521 when Fernando Magallanes first sighted Samar, if we could only do that and see for ourselves the vast tracts of virginal, fertile, and, most of all, unoccupied land all over the Philippine Archipelago, surely we can better understand why the drafters of the Code of Calantiao committed no grievous sin of omission. Indeed, since there was so much land at the time to satisfy the needs of a small population, land troubles were unlikely occurrences. Consequently, there was no pressing need to include in the Code rules for the resolution of conflicts involving land ownership or possession.

The absence of a written land law at this point of our history, however, cannot obscure the fact that a system of laws based on customs and traditions governed the various units of government called the *Barangays*. This is a most significant historical fact that has been confirmed by early accounts, including the popular *Sucessos de las Islas Filipinas* of Antonio de Morga. Under this customary law, the head of the *Barangay* had the prerogative of distributing lands to the members of the *Barangay* settlement. It is interesting to note that the landholdings were of a freehold character, not a leasehold, and they eventually ripened into absolute ownership.[5] This customary method of land distribution undoubtedly proves that, even as early as the *Barangay* days, an indigenous land grant system was already in existence.

It was, however, during the Spanish era that formal land legislation in the form of royal orders, instructions, and decrees commenced and gradually developed into an elaborate system of laws which covered not

---

[4] Mañalac and Mañalac, The Development of Land Laws and Registration in the Philippines, 2 n. 1 (1960).

[5] *Ibid.*

just the distribution of crown lands, but also the registration of Spanish land titles. The distribution of public lands to qualified individuals through royal grants and concessions in various forms was a logical consequence of the theory that by discovery and conquest, all lands in the Philippines became the exclusive patrimony of the Spanish Crown. Thus, the prerogative of issuing public land grants was solely exercised by the crown.

The earlier royal decrees embodied this universal feudal theory that all lands were held from the Spanish crown. A significant exception, however, was subsequently recognized in *Cariño v. Insular Government*,[6] a 1909 case the decision of which was penned by no less than Mr. Justice Oliver Wendell Holmes. In this case, the United States Supreme Court, reviewing a decision of the Philippine Supreme Court, held that "when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land."[7] The significance of *Cariño* cannot be overstressed. Not only does it clarify a number of issues involving Spanish land laws and American land policies at the turn of the century, but more importantly, it also suggests a Due Process and Equal Protection remedy to our cultural minorities under similar or analogous situations.

A fuller appreciation of the significance of *Cariño* requires an examination of the factual and legal environment that surrounded the case. The case arose out of an application for registration of a parcel of land under the Philippine Commission's Act 496 of 1902. The application was granted by the Court of Land Registration, but the Philippine and United States governments, having taken possession of the property for public and military purposes, appealed to the Court of First Instance of Benguet which dismissed the application. The dismissal was affirmed by the Philippine Supreme Court, and the case was subsequently elevated to the United States Supreme Court for review.

The material facts as found by the Court are as follows:

> The applicant and plaintiff in error is an Igorot in the province of Benguet, where the land lies. For more than fifty years before the Treaty of Paris, . . . as far back as the findings go, the plaintiff and his ancestors had held the land as owners. His grandfather had lived upon it, and had maintained fences sufficient for the holding of cattle, according to the custom of the country, some of the fences, it seems, having been of much earlier date. His father had cultivated parts and had used parts for pasturing cattle, and he had used it for pasture in his turn. They all had been recognized as owners by the Igorots, and he had inherited or received the land from his father, in accordance with Igorot custom. No document of title, however, had issued from the Spanish Crown, and although, in 1893-1895 and again in 1896-1897, he made application for one under the royal decrees then in force, nothing seems to have come

[6] 41 Phil. 935 (1909).
[7] *Id.* at 941.

> of it, unless, perhaps, information that lands in Benguet could not be conceded until those to be occupied for a sanatorium, etc.; had been designated,—a purpose that has been carried out by the Philippine government and the United States. In 1901 the plaintiff filed a petition, alleging ownership, under the mortgage law, and the lands were registered to him, that process, however, establishing only a possessory title, it is said.[8]

The crucial issue that had to be resolved by the U.S. Supreme Court was whether or not the plaintiff was the owner of the land. If his claim of ownership could be sustained, then it would follow that he is entitled to registration under Act 496. To support the contention that the plaintiff was not the owner of the disputed land, the government advanced the following arguments:

> [1] that Spain assumed, asserted, and had title to all the lands in the Philippines except so far as it saw fit to permit private titles to be acquired; [2] that there was no prescription against the Crown, and that, if there was, a decree of June 25, 1880, required registration within a limited time to make the title good; [3] that the plaintiff's land was not registered, and therefore became, if it was not always, public land; and [4] that the United States succeeded to the title of Spain, so that the plaintiff has no rights that the Philippine government is bound to respect.[9]

It can be readily seen, that the government's position heavily relied on the theoretic assertion that the Spanish Crown had exclusive patrimony over all lands in the Philippines and that private land titles had to emanate from the Crown.

In rejecting the arguments of the government, the Court emphasized at the outset that:

> [I]n legal theory, sovereignty is absolute, and that, as against foreign nations, the United States may assert, as Spain asserted, absolute power. But it does not follow that, as against the inhabitants of the Philippines, the United States asserts that Spain had such power. When theory is left on one side, sovereignty is a question of strength and may vary in degree. *How far a new sovereign shall insist upon the theoretical relation of the subjects to the head in the past, and how far it shall recognize actual facts, are matters for it to decide.*[10] (emphasis supplied)

From this rather emphatic declaration, one could already detect a sympathetic attitude of the American court toward the plaintiff's claim of ownership. This attitude was made even more manifest when the Court cited Section 12 of the Organic Act of July 1, 1902, which provides, *inter alia,* that all the property and rights acquired in the Philippines by the United States are to be administered "for the benefit of the inhabitants thereof." Moreover, the same law made a Bill of Rights; and section 5 expressly

---

[8] *Id.* at 937.
[9] *Id.* at 938.
[10] *Id.* at 939.

provides that "no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws." As we all know, the same safeguards are also found in the Bill of Rights of both the 1935 and the 1973 Constitutions.

The Court's application of Due Process and Equal Protection of the laws to sustain the validity of the claim of ownership by the plaintiff is unassailable. For surely:

> it is hard to believe that the United States was ready to declare . . . [t]hat 'any person' did not embrace the inhabitants of Benguet, or that it meant by 'property' only that which had become such by ceremonies of which presumably a large part of the inhabitants never had heard, and that it proposed to treat as public land what they, by native custom and by long association, one of the profoundest factors in human thought, —regarded as their own.[11]

An interesting question to raise at this point is: suppose that the applicant's case were to be tried by the law of Spain at the time, would his claim of ownership have prospered? In the opinion of the Court, even if such claim were to be tried by the law of Spain, without considering the effects of the change of sovereignty and of the declaration of purpose and safeguards embodied in the Organic Act of July 1, 1902,[12] it is not clear that the applicant is not the owner of the disputed land. In the words of Mr. Justice Holmes:

> If the applicant's case is to be tried by the law of Spain, we do not discover such clear proof that it was bad by that law as to satisfy us that he does not own the land. To begin with, the older decrees and laws cited by the counsel for the plaintiff in error seem to indicate pretty clearly that the natives were recognized as owning some lands, irrespective of any royal grant. In other words, Spain did not assume to convert all the native inhabitants of the Philippines into trespassers or even into tenants at will. For instance, Book 4, title 12, Law 14 of the Recopilación de Leyes *de las Indias* . . . while it commands viceroys and others, when it seems proper, to call for the exhibition of grants, directs them to confirm those who hold by good grants or *justa prescripción*. It is true that it begins by the characteristic assertion of feudal overlordship and the origin of all titles in the King or his predecessors. That was theory and discourse. The fact was that titles were admitted to exist that owed nothing to the powers of Spain beyond this recognition in their books.[13]

Regarding the claim of the government that there was no prescription against crown lands, and that, if there was, the royal decree of June 25, 1880, required registration within a limited time to make the title good, the U.S. Supreme Court, after carefully examining the provisions of the royal cedula of October 15, 1754 and the royal decree of June 25, 1880, found this claim without merit. The Court noted that:

---

[11] *Id.* at 940.
[12] 32 Stat. 691 (1902).
[13] *Cariño*, 41 Phil. at 941-942.

> Prescription is mentioned again in the royal cedula of October 15, 1754, . . . "Where such possessors shall not be able to produce title deeds, it shall be sufficient if they shall show that ancient possession, as a valid title by prescription." It may be that this means possession from before 1700; but, at all events, the principle is admitted. As prescription, even against Crown lands, was recognized by the laws of Spain we see no sufficient reason for hesitating to admit that it was recognized in the Philippines in regard to lands over which Spain had only a paper sovereignty.
>
> The question comes, however, on the decree of June 25, 1880, for the adjustment of royal lands wrongfully occupied by private individuals in the Philippine Islands. This begins with the usual theoretic assertion that, for private ownership, there must have been a grant by competent authority; but instantly descends to fact by providing that for all legal effects, those who have been in possession for certain times shall be deemed owners. For cultivated land, twenty years, uninterrupted, is enough. For uncultivated, thirty. . . . So that, when this decree went into effect, the applicant's father was owner of the land by the very terms of the decree. But, it is said, the object of this law was to require the adjustment or registration proceedings that it described, and in that way to require every one to get a document of title or lose his land. That purpose may have been entertained, but it does not appear clearly to have been applicable to all. The regulations purport to have been made "for the adjustment of royal lands wrongfully occupied by private individuals." ... It does not appear that this land ever was royal land or wrongfully occupied.[14]

As mentioned earlier, the *Cariño* decision has great potential for affording relief to some of the land problems of some members of our cultural minorities.[15] The application by the U.S. Supreme Court to the case of the rights to Due Process and Equal Protection of the laws has far reaching and salutary effects. It now remains for those who can profit from the decision to take full advantage of it. If Due Process and Equal Protection of the laws saved the day for Cariño, there is no reason why these constitutionally protected rights cannot be successfully invoked by others similarly situated.

The opinion of the Court in *Cariño* includes a brief but enlightening discussion on a particular portion of the *Recopilación de Leyes de las Indias,* the Royal Cedula of October 15, 1754, and the Royal Decree of June 25, 1880. These laws, however, merely form a part of a rather long series of Spanish land laws which, directly or indirectly, affected land grants during the Spanish regime. Although it may be interesting to examine in detail the provisions of these forgotten laws of Spain, our limited time prevents us from doing so. It may be sufficient for our purpose, however, to identify the most notable purpose or feature of these laws.

In the order of their promulgation, these laws were:

1) The *Instructions* which were sent by the home government at Madrid to the Governor in the Philippines, under which transferable *Repar-*

[14] *Id.* at 942-943.

[15] *Cariño* was reaffirmed by the Philippine Supreme Court in the recent case of *Manila Electric Company v. Castro-Bartolome,* 114 SCRA 799 (1982).

timientos, or portions of territory given to those who conquered and subdued the inhabitants of the Islands, were distributed;

2) The *Laws of the Indies,* under which the modes of acquiring public lands were by apportionment to settlers of house-lots, lands, *Peonias* and *Caballerias* on the basis of their social rank or degree;[16] by grant of town council; by confirmation of possession or grant; by royal confirmation of defective or imperfect titles; by adjustment; by public sale; and, by special concessions;

3) The *Royal Decree of October 15, 1754,* which sought to encourage the adjustment and sales of crown lands. Under this law, the modes of acquiring lands were by sale and adjustment, by confirmation of imperfect titles, and by possession and cultivation;

4) *The Royal Order of September 21, 1797,* which enabled the natives to enjoy the use of lands, waters, and pastures gratuitously;

5) *The Royal Cedula Circular of March 23, 1798,* which allowed the applications for the adjustments of lands with a value of less than ₱200 to be granted without need of undergoing formal proceedings;

6) The *Decree of the Cortes of Cadiz of January 4, 1813,* which provided that unappropriated and uncultivated royal lands and lands belonging to cities and municipalities, whether occupied or unoccupied, except those designated as necessary for towns, should be adjudicated in private ownership;

7) The *Royal Circular of February 3, 1864,* which contained instructions as to how government surveys were to be undertaken;

8) The *Royal Decree of June 25, 1880,* which is one of the most important laws concerning the adjustment of title to land;

9) The *Royal Circular of July 14, 1881,* which provided that the reglementary period of one year allowed by the Royal Decree of June 25, 1880, was intended for the filing of applications for composition titles, and not for the completion of the proceedings;

10) The *Royal Order of April 19, 1882,* which extended by another year the period within which applications for composition titles to public lands might be filed;

11) The *Royal Decree of January 19, 1883,* which classified public lands suitable for agriculture as alienable or disposable and lands within the forest zone as reserved;

12) The *Royal Decree of December 26, 1884,* which was a supplement to the Royal Decree of June 25, 1880;

---

[16] *Caballerias* and *Peonias* were parcels of land measuring 100 x 200 feet and 50 x 100 feet, respectively.

13) The *Royal Order of September 7, 1888,* which was likewise, a supplement to the Royal Decree of June 25, 1880;

14) The *Royal Order of October 20, 1888,* which contained instructions for the provincial boards and the local commissions which were created by the Royal Decree of August 31, 1888;

15) The *Spanish Mortgage Law of 1893,* which provided for a system of registration of titles and deeds as well as of possession of lands. This system of registration was in force until February 16, 1976 when it was abrogated by Presidential Decree No. 892; and, finally,

16) The *Royal Decree of February 13, 1894,* otherwise known as the Maura Law, which substantially incorporated all previous land laws. This was the last piece of Spanish land legislation in the Philippines.

The Spanish land laws just mentioned provided for the different modes of acquiring titles to public or crown lands. As can be gleaned from these laws, these modes were: by distribution of *Repartimientos;* by possession or confirmation of an imperfect and incomplete title based on possession; by special concession of the Governor General; by sale or purchase; and, by possessory information proceedings. The land titles that were obtained from these laws were accordingly classified as *Titulo Real* or royal grant, *Titulo de Concesion Especial, Titulo de Compra, Titulo de Composicion con el Estado,* and *Titulo de Informacion Posesoria.* All of these Spanish land titles, which emanated from judicial proceedings, were issued in the form of grants or deeds executed in the name of the Crown or the government.[17]

The distribution of public lands to qualified persons did not end with the Spanish era. During the relatively shorter American regime, a number of public land laws were enacted pursuant to the Act of Congress of July 1, 1902, otherwise known as the Philippine Bill of 1902. Under Sections 12 to 19 of this Act, the Philippine Government at the time was authorized to promulgate rules and regulations and to prescribe terms and conditions pertaining to the perfection of titles to public lands.

The first public land law was Act No. 926, which was enacted by the Philipppine Commission on October 7, 1903. This was followed by Act No. 2874 of the Philippine Legislature which was enacted on July 1, 1919. This law was amended by Acts Nos. 3164, 3219, 3346, and 3517. Act No. 2874 was superseded by Commonwealth Act No. 141 which is a compilation of all laws relative to public lands. This law was approved on November 7, 1936, and took effect on December 1, 1936. In all three public land laws, the common principal objective was to define the status of public lands in the Philippines and to provide for the different modes

[17] MAÑALAC, *supra* note 4, at 47.

of disposition and acquisition of such lands. It is noteworthy that under Section 11, of Commonwealth Act No. 141, Free Patent and Homestead grants are among the modes of acquiring or alienating lands of the public domain which are suitable for agriculture. These are good examples of public land grants under existing legislation.

III. THE PUBLIC LAND GRANT AMENDMENT

After having considered the historical milieu of public land grants, it is now appropriate to shift our discussion to the 1984 constitutional amendment. There were actually four questions which were presented to the electorate at the plebiscite on January 27, 1984. Our inquiry, however, is focused on question no. 3 which was phrased by the Commission on Elections in the following manner:

> Do you vote for the approval of amendments to the Constitution as proposed by the Batasang Pambansa in Resolution Number 105 which, in substance, provides that grant shall be an additional mode for the acquisition of lands belonging to the public domain and that the agrarian reform program may include the grant or distribution of alienable lands of the public domain to qualified tenants, farmers and other landless citizens?

Under Resolution 105 of the Batasang Pambansa, the constitutional provisions sought to be amended are Sections 11 and 12 of Article XIV. As amended, Section 11, in its pertinent part, now reads:

> 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 by lease in excess of five hundred hectares or acquire by purchase, homestead, or *grant* in excess of twenty four hectares (emphasis supplied).

On the other hand, Section 12, in its pertinent part, now reads:

> The State shall formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution.
>
> Such program may include the grant or distribution of alienable and disposable lands of the public domain to qualified tenants, farmers and other landless citizens in areas which the President may, by or pursuant to law reserve from time to time, not exceeding the limitations fixed in accordance with the immediately preceding section.

In *Almario et al. v. Alba*,[18] the Supreme Court, as previously mentioned, resolved the issue of fair and proper submission of Questions 3 and 4 against the petitioners. Under Section 2, Article XVI of the Constitution, a period of not more than three months from the approval of the resolution proposing an amendment is allowed for information drives or campaigns. While it is true that the sufficiency of the period depends on the complexities

[18] 127 SCRA 69 (1984).

involved in the proposed amendments, it is nonetheless clear that implicit in the constitutional provision are certain minimum requirements that must be met before there can be a fair and proper submission to the people of the proposed amendment. Justice Conrado V. Sanchez, in his separate opinion in *Gonzales v. Commission on Elections*,[19] explained these requirements in these words:

> [A]mendments must be fairly laid before the people for their blessing or spurning. The people are not to be mere rubber stamps. They are not to vote blindly. They must be afforded ample opportunity to mull over the original provisions, compare them with the proposed amendments, and try to reach a conclusion as the dictates of their conscience suggest, free from the incubus of extraneous or possibly insidious influences. We believe the word "submitted" can only mean that the government, within its maximum capabilities, should strain every effort to inform every citizen of the provisions to be amended, and the proposed amendments and the meaning, nature and effects thereof. By this, we are not to be understood as saying that, if one citizen or 100 citizens or 1,000 citizens cannot be reached, then, there is no submission within the meaning of the word as intended by the framers of the Constitution. What the Constitution in effect directs is that the government, in submitting an amendment for ratification, should put every instrumentality or agency within its structural framework to enlighten the people, educate them with respect to their act of ratification or rejection. For, as we have earlier stated, one thing is *submission* and another is *ratification*. There must be fair submission, intelligent consent or rejection.[20]

Tested against these minimum requirements, is the Court's ruling in *Almario* that there was fair and proper submission to the electorate of the public land grant amendment formidable?

Despite the fact that Resolution No. 105 was submitted to the people sixty-seven (67) days before Plebiscite Day, it is difficult to agree with the Court that there was fair and proper submission. To support its ruling, the Court cited with approval the argument of the Solicitor-General that:

> 'grant' or 'land grant or distribution' are subject matters that have been in the 'consciousness' of the Filipino people since Commonwealth days, with the enactment of Commonwealth Act No. 141, amending and compiling the previously scattered laws relative to the conservation and disposition of lands of the public domain.[21]

This "consciousness" argument may have the semblance of plausibility, but, on closer analysis, it turns out to be unimpressive. Assuming that the concept of land grants has somehow found its way into the "consciousness" of the people in the years following the enactment of the Public Land Law in 1936, an assumption that one may regard as gratuitous, the obvious fact is that a great number of today's voters were not even born when the Public Land

---

[19] G.R. No. L-28196, November 9, 1967, 21 SCRA 774 (1967).
[20] *Id.* at 816-817.
[21] *Almario*, 127 SCRA at 79.

Law was enacted. For these voters, except, perhaps, those who may have been directly or indirectly involved in Homestead and Free Patent applications and those who by reason of their profession or work have gained familiarity with our land laws, it is unlikely that the intricacies of public land grants are part of their "consciousness." It is probable that, for most of them, their first significant encounter with the concept of public land grants was only during the short period immediately preceding the plebiscite.

The Court, likewise, relied on the following to justify the dismissal of the petition: the publication by the Commission on Elections of the amendments pursuant to Batas Pambansa Blg. 643 in all provinces and cities, except a few where there were no local newspapers; the assurance by the Commission on Elections that the barangays had been enjoined to hold community meetings to enable the electorate to exchange views on the plebiscite questions; the participation of the Integrated Bar of the Philippines and various civic organizations in the public discussion of the merits or demerits of the proposed amendments; and, finally, the regular broadcasting of the amendments in television and radio programs.[22] In the Court's opinion, these facts are fatal to the petitioners' contention that there was no fair and proper submission.

It is disappointing that the Court did not go beyond the act of acknowledging the existence or occurence of the mentioned facts. These bare factual findings should have been subjected to a rigorous examination. The Court, for instance, could have asked the following questions: Was the publication or broadcasting of the amendments sufficient in terms of time available between the broadcasts or publication and the day of the plebiscite to enable the people to fully understand the proposed public land grant amendment? Is it reasonable to presume that, since there was an assurance by the Commission on Elections that the barangays were enjoined to hold community meetings, a significant number of barangays all over the country held such meetings and conducted meaningful discussions on the proposed amendment? Are not the fears expressed by the Integrated Bar of the Philippines, the voluntary bar associations, and other civic and professional organizations an indication that there was insufficient time and inadequate dissemination of information to fully comprehend the meaning, nature, and implications of public land grants?

These questions, it can be conceded, can elicit different answers from different persons depending on their individual perceptions concerning the complexities and intricacies of the proposed amendment. There is no doubt, however, that there are many who would respond to these questions in a manner that will lead to the conclusion that the public land grant amendment was not fairly and properly submitted to the judgment of the people.

[22] *Id.* at 80.

As noted earlier, four members of the Court — Justices Teehankee, Abad Santos, Melencio-Herrera and Relova — filed separate dissenting opinions. Justice Abad Santos candidly admitted that "at this late date — January 24, 1984 — I am asked questions about the two proposals and although I try to do the best I can, I am not too sure about my answers."[23] If that was the predicament of a member of our highest tribunal three days before the plebiscite, it seems certain that the average voter was in no better position on Plebiscite day, and, in all probability, he could not have made an intelligent decision on the proposed public land grant amendment.

As previously mentioned, *Almario* was decided on the issue of fair and proper submission. An equally, if not more, interesting question that arose out of the controversy engendered by the public land grant amendment relates to the necessity of the amendment itself. Is the amendment necessary before the State can undertake programs for the grant or distribution of lands of the public domain to qualified citizens? This issue was not raised in the case. And rightly so, for it is a well-settled rule in constitutional law that the necessity, expediency and wisdom of proposed amendments to the Constitution are not within the power of the judiciary to resolve, but are matters that only the people can decide .

We must, however, confront this issue for it appears that a misunderstanding as to the necessity or superfluity of the public land grant amendment is behind the strong objections of the Integrated Bar of the Philippines, the voluntary bar associations, and various civic and professional organizations. A careful examination of these objections reveals that the common fear of the objectors was that the amendment could be a source of abuse, patronage, graft, and corruption. This fear was based on the premise that the land grants contemplated under the proposed amendment could be given away freely to any Filipino chosen at pleasure.[24]

Even on the assumption that the amendment is necessary — an assumption which, as we shall soon see, cannot stand the test of constitutional interpretation — the underlying premise of the objections is, to say the least, highly questionable. It is not legally accurate to say that land grants can be given away freely to any Filipino chosen at pleasure. Land grants such as Homesteads and Free Patents are available only to *qualified* citizens, and the qualifications which are intended to exclude the landed among the Filipinos are prescribed *by law,* not by any official of the government. And so it shall be under the amendment. The addition of the word "grant" to Section 11, Article XIV, of the Constitution should not unduly alarm us. As observed by the Supreme Court in *Almario,* and this time I find it easy to agree, "any interpretation of 'grant' will, therefore, carry the weight of applicable precedents which surround the associated words

[23] *Id.* at 92.

[24] Bulletin Today, January 20, p. 1, col. 6; January 24, 1984, p. 1, col. 5; January 25, 1984, p. 1, col. 5.

'homestead' and 'purchase' in the same clause of the Constitution."[25] Moreover, under Section 12, Article XIV of the Constitution, the pertinent amendment clearly provides that the land grants are available only to "qualified tenants, farmers and other landless citizens in areas which the President may, by or pursuant to law reserve from time to time, not exceeding the limitations fixed in accordance with the immediately preceding section." Obviously, under the provision, land grants cannot just be given away to any Filipino chosen at pleasure.

What is more important, however, is that even without the amendment, there are provisions in the 1973 Constitution from which we could infer the existence of the power of the State to undertake public land grant programs. The legislative power of the Batasang Pambansa under the Constitution[26] is sufficiently comprehensive to include the power to enact laws concerning the distribution of alienable and disposable lands of the public domain to qualified citizens. In addition, Section 8, Article XIV which partly provides that "with the exception of agricultural, industrial or commercial, residential, and resettlement lands of the public domain, natural resources shall not be alienated," and Section 11, Article XIV which limits homesteads to a maximum of twenty-four hectares, clearly recognize the existence of such power.[27] Even the social justice provision of the Constitution[28] may be invoked as additional constitutional support for the grant of public lands to our landless citizens under terms and conditions prescribed by law.

IV. CONCLUSION

In retrospect, one might say that there was, to borrow the title of a Shakespearean comedy, "much ado about nothing." For after all the heated exchange of arguments and counter-arguments, after all the doubts, the suspicions and the fears that attended the controversy, what it all boils down to is the sobering fact that the public land grant amendment is a constitutional superfluity. Indeed, even without the amendment, there is more than sufficient constitutional basis for legislation on public land grants.

We have seen that the idea of distributing public lands to deserving or qualified individuals is not new. The idea, in point of fact, has been with us since the early days of the barangay. We have likewise seen that from the earliest land allotments in the barangay settlement, to the Spanish *Repartimientos, Peonias* and *Caballerias,* and up to the Homestead and Free Patent under the Public Land Law, land grant has always been a recognized mode or method of acquiring land title. We must hasten to add,

---

[25] *Almario,* 127 SCRA at 78.

[26] CONST., art. VIII, sec. 1.

[27] The Court subscribes to this view. See also the separate opinion of Justice Plana.

[28] CONST., art. 11, sec. 6.

however, that all these do not prove that the public land grant amendment was fairly and properly submitted to the people for their approval or rejection. The idea may be old, but it does not necessarily mean that it is part of the consciousness of the overwhelming majority of the present electorate.

One final question remains to be addressed: If the public land grant amendment is not necessary, why was it submitted to the people for their judgment? Proposing an amendment which is given to confusion and which has no significant function other than to confirm an already existing power is an eminently unsound move. It tends to confuse the people as to its necessity. If it happens that the proposed amendment is rejected, should this signify that the people have opted to withdraw the power? Or, should it be taken to mean that the people consider the proposed amendment as unnecessary? It is not unlikely that a layman might construe the rejection as an act of withdrawal by the people of the power. But, from a strictly legal standpoint this interpretation is untenable. Since the power already exists, its revocation should be unequivocal and cannot be lightly inferred from a rejection of a proposed amendment which does not present the question of retention or revocation of the power to the people. In other words, there can be no repeal by implication in this case. On the other hand, if the rejection is tantamount to saying that the amendment is unnecessary, one cannot be faulted for asking why, in the first place, the people had to go through a costly, if not a meaningless, exercise. If the approval of the amendment serves only a symbolic purpose, as stated by the Supreme Court in *Almario,* the question that must be asked is: Is it a wise policy for the Batasang Pambansa as a constituent body to propose amendments which serve only symbolic purposes? If many amendments of this nature are indiscriminately introduced, the Constitution will be in danger of becoming bloated with confusing verbiage.

It has been pointed out that a well-written constitution should be brief in form, clear in expression, and comprehensive in scope.[29] The need for brevity was explained by Chief Justice Marshall in the classic case of *McCullough v. Maryland.*[30] According to Marshall:

> A Constitution, to contain an accurate detail of all the subdivisions of which its great powers admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves.[31]

---

29 SINCO, PHILIPPINE CONSTITUTIONAL LAW 8 (2nd ed., 1960).
30 4 Wheat. 316, 4 L. ed. 579, (1819).
31 *Id., cited in* SINCO, *supra* note 29, at 8.

On the other hand, the importance of the structural quality of clearness in expression was emphasized by Dean Vicente G. Sinco in these words: "Clearness in the Fundamental Law is conducive to a correct and proper understanding of its provisions. But it is more than that. It is also an evidence of integrity of purpose on the part of its framers who should have no base motives to be concealed by intentional vagueness."[32] And on comprehensiveness, he pointed out that, while the ideal constitution is brief in form, it must, at the same time, be comprehensive in scope so as to cover all the essentials of the political system.[33] This would mean that general terms are to be used, leaving it to the legislature, from time to time, to promulgate laws to effectuate the larger constitutional policies.

In the light of what has been said, I consider it appropriate to end this lecture with the hope that, in the future, the Batasang Pambansa, as a constituent assembly, will avoid the submission to the people of proposed amendments which merely serve to confirm an already existing and constitutionally recognized power.

——oOo——

[32] SINCO, *supra* note 29, at 8.
[33] *Ibid.*