

# ESCHEAT OF ALIEN PROPERTIES

by

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*"Lands and natural resources are immovables and as such can be compared to the vital organs of a person's body, the lack of possession of which may cause instant death or the shortening of life \* \* \* If we do not completely nationalize these two of our most important belongings, I am afraid that the time will come when we shall be sorry for the time we were born." — Delegate Montilla.*

With the tide of nationalism now inflaming and sweeping Africa, the same way it did Asian countries the years immediately following the end of World War II, which saw the birth, among others, of the Republic of the Philippines, it behooves us to refocus our attention to the chronic problem posed by the uncertain status of lands acquired by aliens in violation of the Constitution.

## The Need for a Positive Legislation.

As early as November 15, 1947, the Supreme Court has declared that, under the Constitution, aliens cannot acquire lands in the Philippines, except in cases of hereditary succession. (*Krivenko vs. The Register of Deeds of Manila*, 79 Phil. 461, promulgated November 15, 1947).

Since the fateful declaration, the need for an implementing law that would give teeth to the constitutional mandate has been felt. For, indeed, there is a pressing need for the state to adopt a definite policy to settle once and for all the uncertain status of lands illegally acquired by aliens, and to put a brake on the further mockery of the Constitution by aliens enjoying with impunity and trafficking illegally with the patrimony of the Filipino nation. Unfortunately, nothing concrete has so far been done in this regard!

That the Filipinos are deprived of the enjoyment of these properties reserved for them by the fundamental law of the land is bad enough; but what is worse is that the uncertain status of alien landholdings, particularly of valuable residential and commercial lands, threatens the stability of real estate ownership, impedes economic activity and undermines the time-honored principle of the indefeasibility of Torrens titles.

To the general public, one effect of the *Krivenko* ruling is to taint with a certain degree of illegality or uncertainty all certificates of title thereafter issued in favor of aliens, which, therefore, impairs negotiability. Unless this uncertainty is cleared up, people would be reluctant to accept these titles on their face value.

The filing of House Bill No. 1047 by former Rep. Jose J. Roy (now Senator), Senate Bill No. 103 by Senator Lorenzo Tañada, Senate Bill No. 51 by Senator Sumulong, and House Bill No. 384 by Rep. Jacobo Z. Gonzales in Congress providing for the disposition of alien landholdings acquired in violation of the Constitution, was precisely intended to define the policy of the state on the matter. It is unfortunate that said bills were not passed during the last session of Congress.

## Determining Validity of Alien Acquisitions.

An examination of the Constitutional provisions and jurisprudence in the Philippines regarding alien disqualification reveals the following:

In general, aliens cannot acquire residential, commercial, industrial or other disposable agricultural lands in the Philippines (Section 1, Article XIII, Constitution of the Philippines; *Krivenko vs. Register of Deeds of Manila*, 79

Phil. 461). To this rule may be mentioned several exceptions, to-wit:

1. Alien acquisitions of lands before the adoption of the Philippine Constitution on November 15, 1935, which are considered vested rights (*Phil. National Bank v. Ah Sing*, 69 Phil. 611).

2. Alien acquisitions by virtue of hereditary succession in accordance with section 5 of Article XIII of the Constitution.

3. Alien acquisitions during the Japanese Occupation but which must have been acquired within the period January 1, 1942 to September 8, 1948.

When the Japanese forces occupied the Philippines, all laws political in nature, including the Constitution of the Philippines, were suspended; hence the disqualification of aliens to acquire lands in the Philippines contained in the Constitution was suspended when the Japanese forces occupied the Philippines beginning January 1, 1942. However, it will be recalled that on September 4, 1943, the puppet Philippine Republic was inaugurated and a Constitution containing a provision similar to the former Constitution of the Philippines disqualifying aliens from acquiring lands in the Philippines was adopted. (*Trinidad Gonzaga de Cabauatan v. Uy Hoo*, G.R. No. L-2207, Jan., 1951).

4. Americans, by virtue of the Parity Amendment to the Constitution of the Philippines are also allowed to acquire lands in the Philippines;

5. Acquisitions by disqualified aliens who have become Filipino citizens by naturalization. (*Vasquez vs. Li Seng Glap*, et al., 51 O.G. No. 2 p. 717 Feb. 1955)

## Remedies and Suggestions.

The question frequently asked is whether or not the vendor may maintain an action to recover the property from the alien in case the sale is in violation of the Constitution. In a long line of decisions, the Supreme Court held that even if the sale made to an alien is in violation of the Constitutional prohibition and is therefore null and void, it does not necessarily follow that the vendor who has also violated the Constitutional prohibition has the right to recover the property. In such contingency another principle of law sets in to bar the equally guilty vendor from recovering the title which he had voluntarily conveyed for a consideration, that of *in pari delicto*. As was aptly stated by the Supreme Court: "A party to an illegal contract cannot come into a court of law and ask to have his illegal objects carried out. The law will not aid either party to an illegal agreement; it leaves the parties where it finds them." (*Dinglasan, et al. c. Lee Bun Ting, et al.*, 52 O.G. 7 July 16, 1956). Thus, let alone, and apparently with legal sanction, the alien continues in the full enjoyment of his illegally acquired property.

There are two ways whereby our government could implement the *Krivenko* doctrine and thereby put into force the mandate of our Constitution regarding the conservation of lands

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for the citizens, to wit: (1) action for reversion and (2) escheat to the State.

An action for reversion is slightly different from escheat proceedings, but in effect they are the same. They only differ in procedure. Escheat proceedings may be resorted to in the case of violations of Article XIII section 5, of the Constitution which prohibits transfers of private agricultural lands to aliens; whereas an action for reversion is expressly authorized by sections 122, 123 and 124, otherwise known as the Public Land Act. By following either of these remedies, the fundamental policy of the Constitution may be enforced without doing violence to the principles of *pari delicto*. (*Relloza vs. Gaw Chee Hun*, G.R. No. L-1411, September 29, 1953)

But it will be noted that there is no law in the Philippines providing for the escheat of illegally acquired alien landholdings. And the Supreme Court has held that in the absence of a law or policy on sales of lands in violation of the Constitution, the void could not be filled by said court because the matter falls beyond the scope of its authority and properly belongs to a coordinate power — Congress. (*Dinglasan, et al. vs. Lee Bun Tin, et al.*, *supra*).

Consequently, courts of justice cannot go beyond declaring the acquisitions to be null and void. (*Soriano vs. Ong Hoo, et al.*, 54 O.G. 35, p. 8066, December 8, 1958). The courts are not empowered to escheat these acquisitions without a law that will express the policy of a state called upon to vindicate its territorial integrity.

In the formulation of a law on the matter, the following suggestions are submitted:

Disqualified aliens who acquired before the Krivenko ruling was promulgated on November 15, 1947, may be deemed to have

acquired in good faith. The reason is that before the Krivenko ruling, the government authorities, including the Department of Justice itself, were of the opinion that the disqualification of aliens referred only to "public agricultural lands" in the Philippines.

Also, it was only after twelve (12) years from the time the Constitution was adopted when the Supreme Court had the opportunity to declare that aliens are barred from acquiring lands in the Philippines except by hereditary succession.

So that during all this period of twelve years aliens had been acquiring "private agricultural lands" throughout the country for residential, industrial, commercial or other purposes.

These aliens may, therefore, be given a reasonable time within which to dispose of their illegally acquired landholdings; and in case of their failure to do so, the same may be sold at public auction or escheated to the state.

On the other hand, acquisitions (other than by hereditary succession) made by disqualified aliens after the promulgation of the Krivenko ruling on November 15, 1947, may be deemed to have been made in bad faith. In such cases, the law may require escheat of the properties involved.

However, in the cases where escheat is proper, judicial proceedings are necessary to establish title in the state. The elements of due process of law are to be observed in the escheat proceedings.

Finally, in the formulation of a law on the matter, it is well to consider the position and the commitments of the Philippines in the United Nations Organization.

Let us hope there will be no further delay in the enactment of such a law, so that we shall not be "sorry for the time we were born."