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FROM

APRIL 19, 2017 TO APRIL 26, 2017

SUPREME COURT
MANILA
2018

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 164795. April 19, 2017]

TGN REALTY CORPORATION, *petitioner, vs.* **VILLA TERESA HOMEOWNERS ASSOCIATION, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 45 PETITION; SHOULD NOT INVOLVE THE CONSIDERATION AND RESOLUTION OF THE FACTUAL ISSUES; EXCEPTIONS.— Ordinarily, the appeal by petition for review on *certiorari* should not involve the consideration and resolution of factual issues. Section 1, Rule 45 of the *Rules of Court* limits the appeal to questions of law because the Court, not being a trier of facts, should not be expected to re-evaluate the sufficiency of the evidence introduced in the fora below. x x x There may be exceptions to the limitation of the review to question of law, such as the following: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those by the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the

facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

2. ID.; ID.; ID.; ID.; THE CONFLICT BETWEEN THE EARLIER FINDINGS AND THE RECITALS TO THE CERTIFICATE OF COMPLETION BOTH ISSUED BY THE HOUSING AND LAND USE REGULATORY BOARD (HLURB) NECESSITATES THE RE-EVALUATION OF THE FACTUAL MATTERS; REMAND OF THE CASE TO THE HLURB IS NECESSARY.— The obvious conflict between, on the one hand, the earlier findings made by the HLURB arbiter that undoubtedly became the basis for the HLURB Board of Commissioners, the OP and the CA to successively rule adversely against the petitioner, and, on the other, the recitals to the contrary of the Certificate of Completion issued by the Regional Officer of the HLURB must not be ignored. Justice demands that the conflict be resolved and settled especially considering that the findings and the Certificate of Completion were both issued by the HLURB itself, through its agents. The resolution and settlement of the conflict require the evaluation and re-evaluation of factual matters. Yet, the Court cannot itself resolve and settle the conflict in this appeal because it is not a trier of facts. Moreover, the proper resolution and just settlement of the conflict will probably require the conduct of a hearing to be conducted by an official or office with the competence to determine the factual dispute involved. That office is the HLURB, the agency of the Government in which the expertise to monitor the completion of subdivision projects has been lodged by law. A remand to the HLURB becomes necessary, therefore, in order that an objective but full inquiry into the level of completion of the improvements in the project can be assured.

APPEARANCES OF COUNSEL

Villanueva Gabionza & De Santos for petitioner.
Tuazon & Del Rosario Law Offices for respondent.

D E C I S I O N

BERSAMIN, *J.*:

This case concerns the dispute between the land developer and the residents of its subdivision development regarding the state of improvements on the subdivision. Having been declared by the forum of origin to have not completed the development of the subdivision, and the declaration having been upheld on appeal, the land developer persists in urging the undoing of the decision promulgated on August 6, 2004,[1] whereby the Court of Appeals (CA) denied its petition for review against the adverse ruling of the Office of the President (OP).

Antecedents

Petitioner TGN Realty Corporation owned and developed starting on August 22, 1966 the Villa Teresa Subdivision on a parcel of land situated in Barangays Sto. Rosario and Cutcut, Angeles City, Pampanga. The project soon had many lot buyers who built or bought residential units thereon. Respondent Villa Teresa Homeowners Association, Inc. (VTHAI) was the association of the residents and homeowners of the subdivision.

In a letter dated September 2, 1997,[2] VTHAI, through counsel, made known to the petitioner the following complaints and demands, to wit:

1.1. Immediate opening of Aureo St. and the closed section of Flora Avenue;
1.2. Completion of all fencing at the perimeter of Villa Teresa, including the perimeter fencing along property line from Gate #2 to Sto. Rosario (section of the Flora Avenue) which is being used, against the objection of the residents, as parking for vehicles which constricts the entry and exit to and from the subdivision;

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[1] *Rollo*, pp. 59-67; penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justice Salvador J. Valdez, Jr. and Associate Justice Vicente Q. Roxas.

[2] *Id*. at 76.

1.3. Closure of all openings at the perimeter fence (Pritil gate);
1.4. Construction of adequate drainage at Ma. Cristina and along Flora Avenue;
1.5. Construction of a Guard House and gate at the 2nd Gate and reimburse the VTHA, Inc. for the costs (sic) construction of a Guard House at 3rd gate;
1.6. Completion of all sidewalks;
1.7. Development of the open space;
1.8. Use of residential lots not for residential purposes (HAU) in clear violation of restrictions in the title;
1.9. Plan of HAU to construct an overpass across Flora Ave.;
1.10. Severe pruning of all Talisay trees along the perimeter of HAU resulting in the death of several trees. (These trees have been here for about 20 years now)

Allegedly, VTHAI tried to discuss the complaints and demands but the petitioner failed and refused to meet in evident disregard of the latter's obligations as the owner and developer of the project.

In its letter dated September 22, 1997,[3] the petitioner specifically answered the complaints and demands of VTHAI by explaining thusly:

1.1. Opening of Aureo St. and Flora Avenue

Aureo St. and a portion of Flora Avenue have always been part and parcel of the Holy Angel University even before their construction and development of Villa Teresa Subdivision. Said streets have long been turned-over to the University, and were never opened to the public, much less, the residents of Villa Teresa. Hence, for all legal intents and purposes, said streets are not part of the subdivision and are now under the control and supervision of the University.

1.2. Completion of Fencing

The whole length of the perimeter fence, especially at the back portion, was already constructed prior to the Mt. Pinatubo eruption. It was only in 1992 that flash floods destroyed a small portion thereof, particularly the lots near the David's residence and Marissa Drive opposite Villa Dolores Subdivision.

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[3] *Id*. at 77-79.

Fencing the entrance of Flora Avenue fronting the Jimenez property is a foolish and vindictive way of solving the alleged constricted entry and exit. It will do more harm than good, and result in a legal, if not social and political problem. At most, this is a temporary inconvenience which poses no serious problem.

3. Closure of Openings (Pritil Gate)

Pritil Gate serves as an emergency entry/exit to the subdivision, and is not supposed to be fenced by a concrete wall. Moreover, the adjacent landowner, Rafael Nunag, has threatened to close all our drainage lines passing through his property before it drains to the nearby Matua Creek, if this gate will be fenced. If this happens, water from the upper portion of the subdivision will overflow from the manholes and catch basins, and will flood low lying streets like Aurora Drive and Flora Avenue.

4. Construction of Adequate Drainage

The drainage system designed by Engr. Victor Valencia along Cristina Drive and Flora Avenue has been functioning effectively for thirty (30) years. It was only recently that manholes on low portions of Cristina Drive are slow in absorbing the unusual amount of rain water, but takes only about an hour to fully drain.

5. Construction of Guard House

A guard house was constructed at the Flora Avenue exit, but was transferred by VTHA. As far as reimbursement of costs of guard house at Don Juan Nepomuceno Avenue is concerned, T.G.N. Realty has never agreed to reimburse the same, nor does it intend to.

6. Completion of Sidewalks

All sidewalks of the subdivision were constructed except that portion of Flora Avenue along the open space, because it was leveled by heavy equipments contracted by the VTHA. The gutter along the full frontage of the open space is halved or low, and used by residents as parking for their vehicles. If you will observe, very few people use the sidewalks, especially in this part of the subdivision.

7. Development of the Open Space

Records will show that T.G.N Realty did not advertise nor commit to develop the open space when it opened the subdivision and sold the lots therein. It was never its intention to put up amenities/facilities

that some residents are expecting. It may be recalled that T.G.N. Realty provided several playground equipments in the provisional playground near the Teresa water tank. However, children from nearby barangay Cutcut would climb the fence and play at the park, to the dismay of some residents. Hence, the former officers at VTHA requested T.G.N. Realty to remove these playground equipments and it was agreed that the same be donated to Barangay Cutcut.

8. Use of Residential Lots for Other Purposes

There was no violation of the restrictions when T.G.N. Realty donated the whole Block No. 5 to the Holy Angel University, which is now the site of the school gym. This is a prerogative of the T.G.N. as the owner. Besides, a careful perusal of the titles would readily show that these lots are for educational, and not residential purposes.

9. Plan of HAU to Construct Overpass

We suggest that you direct your request to the school administration as the proper party.

10. Pruning of Trees

T.G.N. Realty has nothing to do with the pruning of Talisay trees around the perimeter of Holy Angel University. However, T.G.N. was informed that the matter has been properly explained to VTHA by the school authorities and that 75 new Mahogany trees were planted to eventually replace 47 live and 14 dead trees.

The truth of the matter is that about two years ago, our client had already dealt with the present officers of VTHA on the control, supervision and maintenance of these facilities, and in fact, a Memorandum of Agreement was prepared for signing by the parties. Among the many conditions that VTHA voluntarily agreed to undertake was payment of realty tax on the road lots and open space, and maintenance and repair of all facilities in the subdivision. A verification with the Office of the City Treasurer, however, revealed that VTHA has been delinquent in the payment of taxes for the past two years.

x x x x x x x x x

In view of the failure and refusal of the petitioner to heed its demands, VTHAI filed with the Housing and Land Use Regulatory Board (HLURB) its complaint for specific performance and for violation of Presidential Decree (P.D.)

No. 957 and P.D. No. 1216 on October 17, 1997, docketed as HLURB Case No. REM-CO-03-7-1133.[4]

On December 10, 1997, the petitioner filed its answer with counterclaim,[5] whereby it reiterated the explanations contained in its letter dated September 22, 1997, and urged that the complaint be dismissed. It insisted that it should be granted moral damages of ₱100,000.00 for discrediting its goodwill, and attorney's fees of ₱30,000.00 plus ₱2,000.00/appearance per hearing because the complaint was malicious.

On September 25, 1998, HLURB Arbiter Jose A. Atencio, Jr. rendered his decision,[6] relevantly holding and ruling thusly:

> To verify the status of development in the subdivision an ocular inspection was conducted on March 13, 1998, and the findings revealed among others that:
>
> Background:
>
> Villa Teresa Subdivision is a first class subdivision . . .
>
> Development Description:
>
> Road Network: Per approved plan all roads will be paved with concrete . . . the Aureo and Flora Ave., which is (sic) near the Holy Angel University is (sic) closed to the subdivision residents and allegedly appropriated by the school.
>
> Curbs, Gutters and sidewalk: The curb, gutters and sidewalks were not yet fully completed specially at the side of the open space.
>
> Drainage System: . . . Per inspection the subdivision drainage were completed but the canal at the Cristina Ave. were (sic) clogging and the road and some houses were submerged with 1-2 feet of water during rainy season as alleged by the residents at the site. Because the flow of water coming from the Holy Angel University cannot be accommodated in the canal, that's why it goes to the road (sic).
>
> Electrical installation: . . . were already completed.

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[4] *Id*. at 68-73.

[5] *Id*. at 80-86.

[6] *Id*. at 203-207.

Water System: . . . will be provided by a centralized water system. Installation of water pipe (sic) were already completed.

Open Space: The designated open space is already operational and a clubhouse is already constructed with a basketball (sic) (which) is on-going construction including the guardhouses and the name of the subdivision (sic). As stated by the members and officer of the association, construction of the basketball court, clubhouse and the name of the subdivision is funded by the Homeowners Assn.

Recommendation: Proper development and maintenance of all subdivision facilities should be undertaken by the owner/developer. And fencing of unfinished perimeter fence especially those leading to the squatter area. Cleaning of clogging canal and help the association in maintaining the subdivision a safe, clean and healthy place to live in (are) the request of the residents.

Based on the allegations in the pleadings and the position papers of the parties the issues to be resolved are whether or not:

1.1. Respondent has violated PD 957, otherwise known as subdivision lot and condominium unit buyer protective decree and PD 1216, the law defining open space in a subdivision,

1.2. The parties are liable for damages and the payments of administrative fines, insofar as the respondent is concerned.

As to the first issue.

A perusal of the evidence presented, records of the subdivision, as well as the facts and circumstances obtaining in the case, it cannot be denied that respondent violated Section 22 of PD 957 when it allowed Flora Avenue and Aureo Street which are part of the subdivision to be closed and exclusively appropriated for the use of Holy Angel University.

It likewise violated the same Section when it caused the construction of a gate (Pritil) as the same is part of the perimeter fence of the subdivision,

The transfer of the whole Block 5 under the name of Holy University (sic) and its subsequent conversion into a compound of the said school is an alteration in violation of the above-mentioned Section of PD 957.

Said Section 22 of PD 957 states that:

> Section 22. Alteration of Plans – No owner or developer shall change or alter roads, open space, infrastructures, facilities for public use and/or other form of subdivision developments as contained in the approved subdivision plan and/or represented in its advertisements, without the permission of the Authority (now this Board) and the written conformity or consent of the duly organized homeowners association or in the absence of the latter by the majority of the lot buyers in the subdivision. (Underscoring ours).

And Section 33 of the said decree provides as follows:

> "Section 33. Nullity of waivers – Any condition, stipulation or provision in a contract of Sale whereby any person waives, compliance with any provisions of this Decree or of any rule or regulation issues thereunder shall be void."

The planned construction of an overpass across Flora Avenue without complying with the requirements above-cited is likewise illegal.

Let us now discuss the development and/or construction of the common facilities of the subdivision.

It cannot be denied that the respondent is obliged to complete the construction of the roads drainage and perimeter fence and ". . . other forms of development represented or promised in the brochures, advertisement and other sales propaganda, disseminated by the owner or developer or his agents and the same shall form part of the sales warrants enforceable against said owner or developer, jointly and severally. Failure to comply with these warranties shall be punishable in accordance with the penalties provided for in this Decree." (Section 19, PD 957).

Respondent is oblige (sic) to construct and maintain the subdivision facilities until proper donation to the city is made. There is no clear proof however that respondent shall construct a guard house at Don Nepomuceno Ave., or reimburse complainant of the cost of its construction.

Maintenance by the respondent is still required despite of its alleged donation of the roads of the subdivision of the City of Angeles because the respondent failed to secure the required Certificate of Completion (COC) as mandated by Rule IV, Section 9, 1st Par. of the implementing rules and regulations of P.D. 1216.

Said Section IV, Section 9, 1st paragraph provides, to wit:

"Section 9 Effects. One the registered owner or developer has secured the Certificate of Completion and has executed a Deed of Donation of road lots and open spaces, he/she shall be deemed relieved of the responsibility of maintaining the roadlots and open space of the subdivision notwithstanding the refusal of the City/Municipality concerned to accept the donation."

Road lots shall include road, sidewalks, alleys and planting strips and its gutters, drainage and sewerage. (Section 4(d), *supra*.)

As to the second issue. Due to the contained failure and refusal of the respondent to comply with the just and valid demands of the complainant compelling them to hire a lawyer to enforce its rights respondent is liable for the payment of actual damages and attorneys fees.

Likewise, for violating the provisions of PD 957, under Section 38 of the Decree respondent is also liable for administrative fine.

PREMISES considered it is ordered that the respondent shall immediately:

1. Open Aureo St. and the closed Section of Flora Avenue.

2. Complete the perimeter fence of the subdivision

3. Close all opening at the perimeter fence (Pritil Gate)

4. Construct and maintain adequate drainage at Ma. Cristina Drive and along Flora Ave.

5. Construct and maintain all sidewalks, roads and gutters as well as the (maintenance of) open space

6. Cease and desist from using residential lots for non-residential purposes until the requirements of Section 22 of PD 957 shall have been complied with.

7. Cease and desist from constructing or allowing to be constructed an overpass across Flora Avenue or any portion of the subdivision until the requirements of Section 22 of PD 957 shall have been complied with.

8. Cease and Desist from pruning trees, particularly the Talisay trees along the perimeter of HAU until the necessary permits have been acquired from the appropriate government agency.

9. Pay an administrative fine of ₱10,000.00 to this Board for violating Sections 19 and 22 of PD 957.

10. Pay actual damages in the amount of ₱30,000.00

11. Pay attorney's fees in the amount of ₱10,000.00

Failure to comply as ordered shall compel this Board to endorse the case to the Provincial Prosecutor for the filing of appropriate criminal case.

SO ORDERED.

By petition for review,[7] the petitioner elevated the adverse decision to the Board of Commissioners of the HLURB (docketed as HLURB Case No. REM-A-990210-0039) based on the following grounds:[8]

1.1. That the Honorable Hearing Officer committed grave abuse of discretion when it declared the petitioner has violated provisions of PD 957;

1.2. The Honorable Hearing Officer committed errors in the findings of facts and in conclusions in law when it found the petitioner liable for pruning trees and closing streets and finding that there was no completion yet of the fence and the roads and alleys, and ordering the petitioner to maintain the roads; for attributing to it a cease and desist order from constructing an overpass;

1.3. The Honorable Hearing officer committed grave abuse of discretion when it ordered the petitioner to pay ₱30,000.00 as and by way of actual damages.

On September 3, 1999, the Board of Commissioners of the HLURB affirmed the HLURB arbiter with modification,[9] *viz.*:[10]

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[7] *Id*. at 210-239.

[8] *Id*. at 211-212.

[9] *Id*. at 258-263; penned by Commissioner Romulo Q. Fabul, and concurred in by Commissioner Joel L. Altea and Commissioner Roque Arrieta Magno.

[10] *Id*. at. 263.

WHEREFORE, the decision of the Office below dated September 25, 1998 is hereby MODIFIED by deleting the directive to pay actual damages, and in lieu thereof, a new directive is hereby entered as follows:

"10. Pay to the complainant the sum of ₱15,000.00 as moderate damages."

All other aspects of the decision dated September 25, 1998 are hereby AFFIRMED.

SO ORDERED.

Ruling of the OP

On October 25, 1999, the petitioner appealed the adverse decision to the OP (docketed as OP Case No. 20-A-8933) on "grounds of errors in the finding of facts and appreciation of evidence and, grave abuse of discretion."[11]

On June 19, 2003, however, the OP, through Sr. Deputy Executive Secretary Waldo Q. Flores, ruled thusly:[12]

This resolves the appeal filed by petitioner-appellant from the Decision of the Board of Commissioners Second Division, Housing and Land Use Regulatory Board dated September 3, 1999, affirming *in toto* the Decision of the Housing and Land Use Arbiter, Atty. Emmanuel T. Pontejos, dated June 23, 1998.[13]

After a careful and thorough evaluation and study of the records of this case, this Office hereby adopts by reference the findings of fact and conclusions of law contained in the HLURB decisions.

A copy of the said HLURB Decision is attached hereto as Annex "A".

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[11] *Id*. at 264.

[12] *Id*. at 293.

[13] The decision of the HLURB Board of Commissioners dated September 3, 1999 affirmed with modification the decision of HLURB Arbiter Jose A. Atencio, Jr. dated September 25, 1998.

WHEREFORE, premises considered, judgment appealed from is hereby **AFFIRMED** *in toto*.

SO ORDERED.

On July 29, 2003, the petitioner moved for reconsideration "on the ground of grave abuse of discretion in merely adopting the findings of facts and conclusions of law of the HLURB decision which amounts to excess of jurisdiction and if not corrected would cause irreparable damage upon the petitioner-appellant."[14]

The OP denied the petitioner's motion for reconsideration on September 10, 2003,[15] stating:

> This refers to the motion of TGN Realty Corporation (TGN) seeking reconsideration of the Decision of this Office dated June 19, 2003, and accordingly prays for the dismissal of the complaint of the private respondent-appellee.
>
> It will be recalled that this Office, in the assailed Decision, dismissed TGN's appeal from the decision of the Housing and Land Use Regulatory Board and affirmed *in toto* the findings of fact and conclusions of law contained in the HLURB decisions. Movant argues that there was a grave abuse of discretion in merely adopting the findings of facts and conclusions of law of the HLURB decision which amounts to excess of jurisdiction and if not corrected would cause irreparable damage upon the petitioner-appellant.
>
> Upon due consideration, this Office finds no cogent reason to disturb its earlier Decision. We have carefully reviewed the arguments raised in the instant motion and find the same to be a mere reiteration of matters previously considered and found to be without merit in the assailed decision. A motion for reconsideration which does not make out "*any new matter sufficiently persuasive to induce modification of judgment will be denied*" (Philippine Commercial and Industrial Bank vs. Escolin, 67 SCRA 202).
>
> **WHEREFORE**, premises considered, the motion for reconsideration is hereby **DENIED.**
>
> **SO ORDERED**.

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[14] *Rollo,* p. 301.

[15] *Id*. at 306.

Decision of the CA

The petitioner then appealed to the CA (CA-G.R. SP No. 79506), urging the review and reversal of the OP's decision on the "ground that there are serious errors in the findings of facts and grave abuse of discretion in the assailed Decision and Order which if not corrected would cause irreparable damage and cause grave legal consequences for the petitioner."[16]

As mentioned, the CA promulgated its assailed decision on August 6, 2004, affirming the OP.[17]

Hence, this appeal by petition for review on *certiorari*.

It is significant to note that even before the Court could act on the petition for review on *certiorari*, the petitioner filed a manifestation on October 6, 2004,[18] stating that "in a certificate of completion dated 28 September 2004, the Housing and Land Use Regulatory Board ("HLURB") has duly certified that upon inspection, the subdivision project of the instant case has been completed in accordance with the approved development plan." The petitioner wanted the Court to appreciate the fact that the project had been completed, thereby rendering the demands of VTHAI ventilated in the HLURB as "bereft of any basis in fact and in law."[19] It prayed that the Court should take note of the manifestation, and consider the Certificate of Completion as part of the records of the case, and to render judgment nullifying the adverse decision of the CA and to direct the dismissal of the complaint filed by VTHAI against it (HLURB Case No. REM-CO-03-7-1133).

On November 17, 2004, the Court required VTHAI to comment on the petition for review on *certiorari* (not to file a

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[16] *Id*. at 316.

[17] *Supra*, note 1.

[18] *Rollo*, pp. 643-645.

[19] *Id*. at 644.

motion to dismiss); and noted the petitioner's manifestation dated October 6, 2004.[20]

On December 29, 2004, VTHAI filed its comment[21] and a counter-manifestation,[22] both of which were noted on January 24, 2005.[23]

On January 12, 2005, the petitioner moved to strike the comment and counter-manifestation,[24] alleging that such filings were in gross violation of Section 11, Rule 13 of the 1997 *Rules of Civil Procedure*; and that although VTHAI asserted that no inspection had been conducted by the HLURB Regional Office, it did not dispute the genuineness of the Certificate of Completion.

On February 10, 2005, VTHAI opposed the petitioner's motion to strike,[25] countering that the requisite written explanations and affidavits of service had appeared on page 25 of its comment and on page 5 of its counter-manifestation, respectively. VTHAI stressed that no inspection had been conducted by the HLURB Regional Office; that the approved subdivision plan had not been completed; and that the petitioner had not yet complied with the decision of the HLURB Regional Office as of the time of its filing of the opposition to the motion to strike.

On March 2, 2005,[26] the Court held in abeyance its action on: (1) the petitioner's motion to strike; and (2) VTHAI's comment on and opposition to the petitioner's motion to strike. It reiterated the resolution of January 24, 2005 requiring the petitioner to submit proof of authority of Juan S. Nepomuceno to sign the *conforme* and to clarify if it was only Atty. Lester

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[20] *Id*. at 649.

[21] *Id*. at 653-676.

[22] *Id*. at 680-684.

[23] *Id*. at 685.

[24] *Id*. at 687-695.

[25] *Id*. at 697-700.

[26] *Id*. at 702.

Cusi or the entire law firm who was withdrawing appearance as counsel.

The petitioner submitted its reply to the comment and opposition on February 24, 2005,[27] its reply to comment on March 4, 2005,[28] and its compliance with the January 24, 2005 resolution on March 16, 2005.[29]

In the meantime, on April 11, 2005, the petitioner submitted its manifestation to the effect that in the compliance dated March 4, 2005, Atty. Cusi clarified that it was his entire law firm that was withdrawing its appearance as counsel.[30]

On June 22, 2005, the Court resolved to: (1) note the manifestation of the Villanueva De Leon Hipolito Law Offices that it had already complied with the resolution of January 24, 2005; (2) deny the petitioner's motion to strike VTHAI's comment on the petition for review on *certiorari* and counter-manifestation; and (3) note VTHAI's opposition to the motion to strike of the petitioner.[31]

On August 30, 2005, the petitioner filed a motion for leave and to admit[32] its reply to comment.[33] On October 17, 2005, the Court denied the petitioner's motion for leave and to admit, noted without action the reply to comment "in view of the denial of the motion to file the same and considering that it would in effect be a second reply as petitioner's earlier reply dated March 4, 2005 had been noted in the resolution of April 25, 2005."[34]

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[27] *Id*. at 703-711.

[28] *Id*. at 743-756.

[29] *Id*. at 758-761.

[30] *Id*. at 764-766.

[31] *Id*. at 780.

[32] *Id*. at 781-783.

[33] *Id*. at 784-797.

[34] *Id*. at 799.

Issues

The petitioner raises the following issues,[35] namely:

(a)

THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT FAILED TO ORDER THE DISMISSAL OF THE SUBJECT COMPLIANT (sic) DESPITE THE CLEAR SHOWING THAT THE SAID COMPLAINT IS BEREFT OF ANY FACTUAL AND/OR LEGAL BASIS

(b)

THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT SIMPLY AFFIRMED THE DECISION AND ORDER OF THE OFFICE OF THE PRESIDENT DESPITE THE FACT THAT THE SAME WERE ISSUED WITHOUT EVEN EXPLAINING THE FACTS AND LAW UPON WHICH THE SAME WERE BASED.

(c)

THE COURT OF APPEALS GRAVELY ERRED WHEN IT REFUSED TO ORDER THE DISMISSAL OF THE COMPLAINT FILED UNDER HLURB CASE NO. REM-CO-03-7-1133 DESPITE THE FACT THAT THE SAME DID NOT CONTAIN A CERTIFICATION AGAINST FORUM SHOPPING.

(d)

THE COURT OF APPEALS GRAVELY ERRED WHEN IT REFUSED TO ORDER THE DISMISSAL OF THE COMPLAINT FILED UNDER HLURB CASE NO. REM-CO-03-7-1133 DESPITE THE FACT THAT THE SAME WAS FILED WITHOUT ANY AUTHORITY FROM HEREIN RESPONDENT.

Ruling of the Court

The petition for review on *certiorari* is granted.

The issues being raised by the petitioner – that VTHAI did not cite any basis for its demands; that VTHAI did not present any evidence to show that the approved subdivision plan required its demands; that VTHAI did not establish that the petitioner

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[35] *Id*. at 32-33.

had violated Section 22 of P.D. No. 957; that VTHAI did not present evidence proving that the petitioner was the party responsible for the acts being attributed to it, like the closure of Aureo Street and a section of Flora Avenue, the use of residential lots for other purposes, the proposed construction of an overpass, and the pruning of Talisay trees along the perimeter of the Holy Angel University; and that the petitioner had not complied with its obligations to complete the development of the project — are essentially factual in nature.

Ordinarily, the appeal by petition for review on *certiorari* should not involve the consideration and resolution of factual issues. Section 1, Rule 45 of the *Rules of Court* limits the appeal to questions of law because the Court, not being a trier of facts, should not be expected to re-evaluate the sufficiency of the evidence introduced in the fora below.[36] For this purpose, the distinction between a question of law and a question of fact is well defined. In *Century Iron Works, Inc. v. Banas*,[37] this Court has stated:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.
>
> Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

There may be exceptions to the limitation of the review to question of law, such as the following: (1) when the findings

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[36] *Carpio v. Sebastian*, G.R. No. 166108, June 16, 2010, 621 SCRA 1.

[37] G.R. No. 184116, June 19, 2013, 699 SCRA 157, 166-167.

are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those by the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[38]

Yet, none of the foregoing exceptions to the limitation applies to this case. As a consequence it seems foregone that the Court would be justified in now rejecting the appeal of the petitioner, and in upholding the CA adversely against the petitioner.

But the attention of the Court has been directed to the conflict in the findings on the state of the development of the project.

According to the decision dated September 25, 1998 of the HLURB arbiter, an ocular inspection of the premises was conducted on March 13, 1998 in order to verify the status of the development of the project. It was found at the time that "*proper development and maintenance of all subdivision facilities should be undertaken by the owner/developer. And fencing of unfinished perimeter fence especially those leading to the squatter area. Cleaning of clogging canal and help the association in maintaining the subdivision a safe, clean and healthy place to live in (are) the requests of the residents.*" Being the agency

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[38] *Heirs of Antonio Feraren v. Court of Appeals (Former 12th Division)*, G.R. No. 159328, October 5, 2011, 658 SCRA 569, 574-575.

that has acquired the expertise on the matter in question, the HLURB's findings should be respected.[39]

As adverted to earlier, however, the Regional Office of the HLURB meanwhile issued the Certificate of Completion dated September 28, 2004 stating that "*upon inspection, the subdivision project of the instant case has been completed in accordance with the approved development plan*."[40] The Certificate of Completion is reproduced in full hereinbelow:

CERTIFICATE OF COMPLETION

Name of Project	:	**VILLA TERESA SUBDIVISION**
Location	:	Sto. Rosario; Cutcut, Angeles City
Owner	:	Peter G. Nepomoceno/T.G.N. Realty Corp.
Project Classification	:	PD 957
CR No./Date Issued	:	RS-056/July 14, 1977
LS No./Date Issued	:	LS-0514/July 14, 1977
Area No. of Lots	:	637,335 square meter

BE IT KNOWN that the above-described project upon inspection has been completed in accordance with the approved development plan. Accordingly, upon recommendation of the Inspection Team, said project is hereby certified as completed.

Let it be known further that this office interposes no objection to the donation/turn over of the facilities of the said subdivision project to the Local Government of Angeles City.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of this Board to be affixed at San Fernando City, Pampanga this **28th Day of September 2004.**

(signed)
EDITHA U. BARRAMEDA
Regional Officer[41]

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[39] *Greenhills East Association, Inc. v. E. Ganzon, Inc.*, G.R. No. 169741, January 20, 2010, 610 SCRA 387.

[40] *Rollo,* p. 643.

[41] *Id*. at 647.

A certificate of completion certifies that a subdivision project has been completed in accordance with the approved development plan. This is clear from Section 8 of the *Rules Implementing Presidential Decree No. 953, pursuant to Article IV, Section 5I of Executive Order No. 648*, to wit:

> Section 8. **ISSUANCE OF CERTIFICATE OF COMPLETION –** No Certificate of Completion (COC) shall be issued by the HLURB unless the subdivision owner/developer complies with the provisions of these Rules and Regulations.

The Certificate of Completion dated September 28, 2004, being the issuance of the HLURB itself, cannot be ignored. Its significance derives from the law itself. Section 31 of Presidential Decree No. 957, as amended by Presidential Decree No. 1216,[42] reads:

> Section 31. Roads, Alleys, Sidewalks and Open spaces. The owner as developer of a subdivision shall provide adequate roads, alleys and sidewalks. For subdivision projects one (1) hectare or more, the owner or developer shall reserve thirty percent (30%) of the gross area for open space. such open space shall have the following standards allocated exclusively for parks, playgrounds and recreational use:
>
> (a) 9% of gross area for high density or social housing (66 to 100 family lot per gross hectare).
>
> (b) 7% of gross area for medium-density or economic housing (21 to 65 family lot per gross hectare).
>
> (c) 3.5 % of gross area low-density or open market housing (20 family lots and below per gross hectare).
>
> These areas reserved for parks, playgrounds and recreational use shall be non-alienable public lands, and non-buildable. The plans of

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[42] DEFINING "OPEN SPACE" IN RESIDENTIAL SUBDIVISIONS AND AMENDING SECTION 31 OF PRESIDENTIAL DECREE NO. 957 REQUIRING SUBDIVISION OWNERS TO PROVIDE ROADS, ALLEYS, SIDEWALKS AND RESERVE OPEN SPACE FOR PARKS OR RECREATIONAL USE.

the subdivision project shall include tree planting on such parts of the subdivision as may be designated by the Authority.

Upon their completion as certified to by the Authority, the roads, alleys, sidewalks and playgrounds shall be donated by the owner or developer to the city or municipality and it shall be mandatory for the local governments to accept provided, however, that the parks and playgrounds may be donated to the Homeowners Association of the project with the consent of the city or municipality concerned. No portion of the parks and playgrounds donated thereafter shall be converted to any other purpose or purposes. (Bold emphasis supplied)

In this connection, the last paragraph of the Certificate of Completion issued by the HLURB Regional Office reflected as follows:

Let it be known further that this Office interposes no objection to the donation/ turnover of the facilities of the said subdivision project to the Local Government of Angeles City.

We note, too, that under Section 9 of the *Rules and Regulations Implementing Presidential Decree No. 957, as amended by Presidential Decree No. 1216*, the registered owner or developer of the subdivision who has secured the certificate of completion and has executed the deed of donation in favor of the city or municipality "*shall be deemed relieved of the responsibility of maintaining the road lots and open space of the subdivision notwithstanding the refusal of [the] City/Municipality concerned to accept the donation*." Moreover, Section 1 (2) of Presidential Decree No. 953[43] specifically states: "(*E)very owner of an existing subdivision shall plant trees in the open spaces required to be reserved for the common use and enjoyment of the owners of the lots therein as well as along all roads and service streets. The subdivision owner shall consult the Bureau of Forest Development as to the appropriate species of trees to be planted and the manner of planting them*."

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[43] REQUIRING THE PLANTING OF TREES IN CERTAIN PLACES AND PENALIZING UNAUTHORIZED CUTTING, DESTRUCTION, DAMAGING AND INJURING OF CERTAIN TREES, PLANTS AND VEGETATION.

The obvious conflict between, on the one hand, the earlier findings made by the HLURB arbiter that undoubtedly became the basis for the HLURB Board of Commissioners, the OP and the CA to successively rule adversely against the petitioner, and, on the other, the recitals to the contrary of the Certificate of Completion issued by the Regional Officer of the HLURB must not be ignored. Justice demands that the conflict be resolved and settled especially considering that the findings and the Certificate of Completion were both issued by the HLURB itself, through its agents.

The resolution and settlement of the conflict require the evaluation and re-evaluation of factual matters. Yet, the Court cannot itself resolve and settle the conflict in this appeal because it is not a trier of facts. Moreover, the proper resolution and just settlement of the conflict will probably require the conduct of a hearing to be conducted by an official or office with the competence to determine the factual dispute involved. That office is the HLURB, the agency of the Government in which the expertise to monitor the completion of subdivision projects has been lodged by law. A remand to the HLURB becomes necessary, therefore, in order that an objective but full inquiry into the level of completion of the improvements in the project can be assured.

The expertise and competence of the HLURB for the purpose has been aptly expounded in *Peralta v. De Leon*,[44] citing *Maria Luisa Park Association, Inc. v. Almendras*,[45] *viz.*:

> **The provisions of P.D. No. 957 were intended to encompass all questions regarding subdivisions and condominiums.** The intention was aimed at providing for an appropriate government agency, the HLURB, to which all parties aggrieved in the implementation of provisions and the enforcement of contractual rights with respect to said category of real estate may take recourse. The business of developing subdivisions and corporations being imbued with public

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[44] G.R. No. 187978, November 24, 2010, 636 SCRA 232, 244.

[45] G.R. No. 171763, June 5, 2009, 588 SCRA 663, 672-673.

interest and welfare, any question arising from the exercise of that prerogative should be brought to the HLURB which has the technical know-how on the matter. In the exercise of its powers, the HLURB must commonly interpret and apply contracts and determine the rights of private parties under such contracts. This ancillary power is no longer a uniquely judicial function, exercisable only by the regular courts.

In view of the foregoing, the Court sees no need to dwell at length on and resolve the remaining issues submitted for consideration.

WHEREFORE, the Court **SETS ASIDE** the decision promulgated by the Court of Appeals on August 6, 2004; and **ORDERS** the remand of this case (HLURB Case No. REM-CO-03-7-1133) to the Housing and Land Use Regulatory Board for further proceedings, particularly to determine whether or not the petitioner had already fully complied with the approved development plan for its Villa Teresa Subdivision situated in Sto. Rosario, Cutcut, Angeles City.

No pronouncement on costs of suit.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Reyes, Jardeleza,* and *Tijam, JJ.,* concur.

SECOND DIVISION

[G.R. No. 181489. April 19, 2017]

STEVEN R. PAVLOW, *petitioner, vs.* **CHERRY L. MENDENILLA,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 9262 (THE ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004); REMEDIES AVAILABLE TO VICTIMS OF ACTS OF VIOLENCE AGAINST WOMEN AND THEIR CHILDREN.—** Republic Act No. 9262 specifies three (3) distinct remedies available to victims of acts of "violence against women and their children": first, a criminal complaint; second, a civil action for damages; and finally, a civil action for the issuance of a protection order. A criminal complaint may be resorted to when the act of violence against women and their children is committed through any, some, or all of the nine (9) means which Section 5 of the Anti-VAWC Law specifies as constitutive of "[t]he *crime* of violence against women and their children." If found guilty, the perpetrator shall suffer the penalties stipulated under Section 6, *i.e.*, imprisonment and payment of a fine. In addition, he or she shall be made to undergo psychological counselling or psychiatric treatment. A civil action for damages may be resorted to pursuant to Section 36 of the Anti-VAWC Law x x x. Rule V, Section 35 of the Implementing Rules and Regulations of the Anti-VAWC Law states that when a criminal action is also available and is resorted to, "[t]he civil action for damages is deemed instituted with the criminal action, unless an independent civil action for damages is filed." A protection order is issued "for the purpose of preventing further acts of violence against a woman or her child . . . and granting other necessary relief"; thereby "safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life."

2. **ID.; ID.; ID.; PROTECTION ORDERS; KINDS.—** Republic Act No. 9262 allows for the issuance of three (3) kinds of protection orders: a Barangay Protection Order, a Temporary Protection Order, and a Permanent Protection Order. A Barangay Protection Order is issued by a Punong Barangay or by a Barangay Kagawad. Temporary protection orders and permanent protection orders are judicial issuances obtained through trial courts.

3. **ID.; ID.; ID.; ID.; TEMPORARY PROTECTION ORDER; A PROVISIONAL RELIEF WHICH IS EFFECTIVE FOR**

THIRTY DAYS, AND WITHIN THESE THIRTY DAYS, A HEARING TO DETERMINE THE PROPRIETY OF ISSUING A PERMANENT PROTECTION ORDER MUST BE CONDUCTED.— As its name denotes, a temporary protection order is a provisional relief. It shall be effective for 30 days, following a court's "ex parte determination that such order should be issued." Within these 30 days, a hearing to determine the propriety of issuing permanent protection order must be conducted. The temporary protection order itself "shall include notice of the date of the hearing on the merits of the issuance of a [permanent protection order]." Following the conduct of a hearing, a permanent protection order may be issued and "shall be effective until revoked by a court upon application of the person in whose favor the order was issued."

4. **ID.; ID.; ID.; ID.; A PETITION FOR THE ISSUANCE OF A PROTECTION ORDER MAY BE FILED BY THE VICTIM'S MOTHER.—** Section 9 of the Anti-VAWC Law enumerates the persons who may apply for the issuance of a protection order x x x. [A] petition for the issuance of protection order is not limited to the alleged victim herself. The victim's mother – as is the case with respondent Mendenilla – is explicitly given the capacity to apply for a protection order for the benefit of her child. By this clear statutory provision, Mendenilla had the requisite personality to file a petition for the issuance of a protection order in favor of Maria Sheila.

5. **REMEDIAL LAW; A.M. NO. 04-10-11-SC (THE RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN); PROTECTION ORDERS; THE RIGHT OF PERSONS OTHER THAN THE VICTIM TO FILE A PETITION FOR THE ISSUANCE OF A PROTECTION ORDER MAY NOT BE EXERCISED FOR AS LONG AS THE PETITION FILED BY THE VICTIM SUBSISTS.—** Section 8 of A.M. No. 04-10-11-SC reads: "Section 8. Who may file petition. — x x x *The filing of a petition for protection order by the offended party suspends the right of all other authorized parties to file similar petitions."* x x x The word used by Section 8 is "suspend." To suspend is to momentarily, temporarily, or provisionally hold in abeyance. It is not to perpetually negate, absolutely cancel, or otherwise obliterate. The right of persons other than the victim to file a petition for the issuance of a protection order therefore persists; albeit, they

may not exercise such right for as long as the petition filed by the victim subsists.

6. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; NATURE; THE DISMISSAL OF A COMPLAINT ON PRELIMINARY INVESTIGATION BY A PROSECUTOR CANNOT BE CONSIDERED A VALID AND FINAL JUDGMENT.— Jurisprudence has long settled that preliminary investigation does not form part of trial. Investigation for the purpose of determining whether an actual charge shall subsequently be filed against the person subject of the investigation is a purely administrative, rather than a judicial or quasi-judicial, function. It is not an exercise in adjudication: no ruling is made on the rights and obligations of the parties, but merely evidentiary appraisal to determine if it is worth going into actual adjudication. The dismissal of a complaint on preliminary investigation by a prosecutor "cannot be considered a valid and final judgment." As there is no former final judgment or order on the merits rendered by the court having jurisdiction over both the subject matter and the parties, there could not have been *res judicata* — actual or looming as to bar one (1) of several proceedings on account of *litis pendentia* — as to bar Mendenilla's petition for being an act of forum shopping.

7. ID.; CIVIL PROCEDURE; SUMMONS; SERVES NOT ONLY TO NOTIFY THE DEFENDANT OF THE FILING OF AN ACTION BUT ALSO TO ENABLE ACQUISITION OF JURISDICTION OVER HIS PERSON IN AN ACTION *IN PERSONAM*.— Summons is a procedural tool. It is a writ by which the defendant is notified that an action was brought against him or her. In an action *in personam*, brought to enforce personal rights and obligations, jurisdiction over the person of the defendant is mandatory. In such actions, therefore, summonses serve not only to notify the defendant of the filing of an action, but also to enable acquisition of jurisdiction over his person.

8. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 9262 (THE ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004); PROTECTION ORDERS; A PROTECTION ORDER IS NOT A PROCEDURAL MECHANISM BUT A SUBSTANTIVE RELIEF WHICH PREVENTS FURTHER ACTS OF VIOLENCE AGAINST

A WOMAN OR HER CHILD.— A protection order is not a procedural mechanism, which is imperative for the progression of an initiated action. Rather, it is itself a substantive relief which "prevent[s] further acts of violence against a woman or her child specified in Section 5 of [the Anti-VAWC Law] and granting other necessary relief." Protection orders issued by courts come in two (2) forms: temporary and permanent. The distinction, as their respective names denote, is their duration. A temporary protection order is provisional, whereas a permanent protection order is lasting or final.

9. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; SERVICE OF SUMMONS; HOW EFFECTED.— Section 1 of A.M. No. 04-10-11-SC expressly states that while it governs petitions for the issuance of protection orders under the Anti-VAWC Law, "[t]he Rules of Court shall apply suppletorily." In the silence of A.M. No. 04-10-11-SC, service of summons – the means established by the 1997 Rules of Civil Procedure for informing defendants and/or respondents of the filing of adverse actions, and for the acquisition of jurisdiction over their persons – remains efficacious. x x x Rule 14, Section 6 of the 1997 Rules of Civil Procedure clearly articulates a preference for personal service of summons x x x. Rule 14, Section 6 recognizes two (2) alternative ways through which personal service may be effected: first, by actually handing summons to the defendant, which presupposes the defendant's willingness to accept the summons; and second, by mere tender, if the defendant refuses to accept. If personal service is impracticable within a reasonable time, substituted service may be resorted to in lieu of personal service x x x [, pursuant to] Rule 14, Section 7 x x x. In the case of residents who are temporarily not in the Philippines, another alternative means for serving summons is through extraterritorial service x x x [,pursuant to] Rule 14, Section 16 x x x.

10. ID.; ID.; ID.; ID.; SUBSTITUTED SERVICE; THE AVAILABILITY OF EXTRATERRITORIAL SERVICES DOES NOT PRECLUDE SUBSTITUTED SERVICE WITH RESPECT TO RESIDENTS TEMPORARILY OUT OF THE PHILIPPINES.— Jurisprudence has long settled that, with respect to residents temporarily out of the Philippines, the availability of extraterritorial services does not preclude substituted service. Resort to substituted service has long been

held to be fair, reasonable and just. This Court has noted that a contrary, restrictive view is that which defeats the ends of justice. It has been emphasized that residents who temporarily leave their residence are responsible for ensuring that their affairs are in order, and that, upon their return, they shall attend to exigencies that may have arisen.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Lenito Serrano for respondent.

D E C I S I O N

LEONEN, *J.*:

The mother of a victim of acts of violence against women and their children is expressly given personality by Section 9(b)[1] of Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004 (the Anti-VAWC Law), to file a civil action petitioning for the issuance of a protection order for her child. In filing such a petition, she avails of a remedy that is distinct from the criminal action under Section 5 of the same law.[2] The mere filing of such a criminal

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[1] Rep. Act No. 9262, Sec. 9 provides:

Section 9. Who May File Petition for Protection Orders. – A petition for protection order may be filed by any of the following:

. . . .

(b) parents or guardians of the offended party[.]

[2] Rep. Act No. 9262, Sec. 5 provides:

Section 5. Acts of Violence Against Women and Their Children. – The crime of violence against women and their children is committed through any of the following acts:

(a) Causing physical harm to the woman or her child;
(b) Threatening to cause the woman or her child physical harm;
(c) Attempting to cause the woman or her child physical harm;
(d) Placing the woman or her child in fear of imminent physical harm;
(e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from

complaint, without the subsequent filing of an information in court, does not occasion *litis pendentia* or *res judicata* that precludes the filing of a petition for the issuance of a protection order.

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or to desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or her child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:

(1) Threatening to deprive or actually depriving the woman or her child of custody or access to her/his family;

(2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;

(3) Depriving or threatening to deprive the woman or her child of a legal right;

(4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;

(f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;

(g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;

(h) Engaging in purposeful, knowing, or reckless conduct, personally or through another that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:

(1) Stalking or following the woman or her child in public or private places;

(2) Peering in the window or lingering outside the residence of the woman or her child;

(3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;

(4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and

(5) Engaging in any form of harassment or violence;

The Rules of Court suppletorily apply in proceedings relating to the Anti-VAWC Law. Among the provisions of the 1997 Rules of Civil Procedure that continue to govern proceedings under the Anti-VAWC Law are those on substituted service of summons. This was validly resorted to in this case, thereby enabling the Regional Trial Court to acquire jurisdiction over petitioner's person.

This resolves a Petition for Review on Certiorari[3] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed October 17, 2007 Decision[4] and January 25, 2008 Resolution[5] of the Court of Appeals in CA-G.R. SP No. 94540 be reversed and set aside.

The assailed Court of Appeals Decision dismissed petitioner Steven R. Pavlow's (Pavlow) Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure. The Decision found no grave abuse of discretion on the part of Judge Natividad A. Giron-Dizon (Judge Giron-Dizon) of the Regional Trial Court of Quezon City, Branch 106 in her denial[6] of petitioner's Omnibus Motion.[7] Petitioner's Motion included a prayer to dismiss the Petition for Issuance of a Temporary Protection Order or Permanent Protection Order[8] under the Anti-VAWC Law. This

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(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or denial of access to the woman's child/children.

[3] *Rollo*, pp. 10-55.

[4] *Id*. at 60-87. The Decision was penned by Associate Justice Sixto C. Marella, Jr. and concurred in by Associate Justices Mario L. Guarina III and Japar B. Dimaampao of the Sixteenth Division, Court of Appeals, Manila.

[5] *Id*. at 89-90. The Resolution was penned by Associate Justice Sixto C. Marella, Jr. and concurred in by Associate Justices Amelita G. Tolentino and Lucenito N. Tagle of the Former Sixteenth Division, Court of Appeals, Manila.

[6] *Id*. at 187-193. Order.

[7] *Id*. at 183-186.

[8] *Id*. at 148-167.

Petition for the issuance of a protection order was filed by respondent Cherry L. Mendenilla (Mendenilla), the mother of petitioner's wife, Maria Sheila Mendenilla Pavlow (Maria Sheila).

In denying petitioner's Omnibus Motion, Judge Giron-Dizon ruled that Mendenilla had personality to file a petition for the issuance of a protection order to benefit her daughter. It was equally ruled that Mendenilla did not engage in forum shopping[9] despite the prosecutor's prior dismissal[10] of a criminal complaint[11] filed by Maria Sheila against petitioner for slight physical injuries and maltreatment in relation to the Anti-VAWC Law. Finally, it was established that jurisdiction over petitioner's person was properly acquired through substituted service.[12]

On March 11, 2005, petitioner Pavlow, an American citizen and President of Quality Long Term Care of Nevada, Inc., married Maria Sheila, a Filipino, in civil rites in Quezon City. Thereafter, they cohabited as husband and wife.[13]

Barely three (3) months into their marriage, on May 31, 2005, Maria Sheila filed a Complaint-Affidavit against Pavlow for slight physical injuries.[14] On June 3, 2005, Maria Sheila filed an Amended Complaint-Affidavit[15] to include maltreatment in relation to the Anti-VAWC Law as a ground.

Specifically, Maria Sheila alleged that she and Pavlow had fights on February 26, 2005 and on March 10, 2005 over a certain Diane, an employee of the Manila Peninsula Hotel.[16]

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[9] *Id.* at 191.

[10] *Id.* at 144-147. Resolution.

[11] *Id.* at 91-95.

[12] *Id.* at 189-191.

[13] *Id.* at 61-62.

[14] *Id.* at 62.

[15] *Id.* at 91-95.

[16] *Id.* at 92-93.

As Maria Sheila was told by Monette Tolentino (Tolentino) and Louise Cruz, two (2) of petitioner's employees in Quality Long Term Care of Nevada, Inc., Diane liked Pavlow and was sending him text messages and e-mails.[17] Maria Sheila added that on March 15, 2005, she and Pavlow quarrelled over their loss of privacy and the intrusion into their affairs of the same employees.[18] She further claimed that, on March 16, 2005, Pavlow hit her in the stomach and shouted at her for recounting her marital experiences to her mother, respondent Mendenilla, with Pavlow telling her that despite their recent marriage there was nothing to celebrate.[19] She also recalled that, on April 16, 2005, she and Pavlow again clashed over the phone as regards the messages of one (1) of Steven's female employees, during which, Pavlow slapped her and hit her upper back.[20] Maria Sheila also disclosed that Pavlow had been compelling her every night to take two (2) small white tablets, which made her feel dizzy. She contended that she could not disobey petitioner for fear of being hit and maltreated.[21]

On August 25, 2005, Makati Assistant City Prosecutor Romel S. Odronia (Assistant City Prosecutor Odronia) issued a resolution dismissing Maria Sheila's criminal complaint, holding that Maria Sheila failed to substantiate her allegations.[22]

Following this, on August 26, 2015, Mendenilla filed with the Quezon City Regional Trial Court a Petition[23] for Maria Sheila's benefit, praying for the issuance of a Temporary Protection Order or Permanent Protection Order under the Anti-VAWC Law. This Petition was docketed as Civil Case No. Q-05-56169.

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[17] *Id*.

[18] *Id*. at 93.

[19] *Id*.

[20] *Id*.

[21] *Id*. at 94.

[22] *Id*. at 65-66.

[23] *Id*. at 148-167.

In her petition, Mendenilla recalled the same ordeal recounted by Maria Sheila in her own criminal complaint. Mendenilla added that she had been aware of her daughter's ordeal and that on July 21, 2005, Maria Sheila was admitted to St. Agnes General Hospital for injuries borne by Pavlow's alleged acts of violence.[24]

On August 31, 2005, Judge Giron-Dizon issued a Temporary Protection Order[25] in favor of Maria Sheila. Issued along with this Order was a Summons[26] addressed to Pavlow.

In a Sheriff's Report with Clarification dated September 8, 2005,[27] Deputy Sheriff Arturo M. Velasco (Deputy Sheriff Velasco) recounted that when service of summons with the Temporary Protection Order attached was attempted on September 7, 2005, Pavlow was out of the country.[28] Thus, summons was served instead through his employee, Tolentino, who also resided at Pavlow's own residence in Unit 1503, Grand Tower Condominium, 150 L.P. Leviste St., Makati City.[29]

On September 13, 2005, Pavlow filed Omnibus Motions[30] praying for the dismissal of Mendenilla's petition, the reconsideration of the issuance of the Temporary Protection Order, and the suspension of the enforcement of the Temporary Protection Order. He raised as principal ground the Regional Trial Court's supposed lack of jurisdiction over his person as summons was purportedly not properly served on him.[31]

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[24] *Id*. at 151.

[25] *Id*. at 176-180.

[26] *Id*. at 175.

[27] *Id*. at 181-182.

[28] *Id*. at 19-20.

[29] *Id*. at 181 and 81.

[30] *Id*. at 183-186.

[31] *Id*. at 183.

In the Order dated December 6, 2005,[32] Judge Giron-Dizon denied Pavlow's motion to dismiss, reasoning that substituted service of summons sufficed since the case filed by Mendenilla was an action in personam because Pavlow was out of the country during the service of summons.[33]

Following Judge Giron-Dizon's denial of Pavlow's motion for reconsideration, Pavlow filed a Petition for Certiorari[34] before the Court of Appeals. He charged Judge Giron-Dizon with grave abuse of discretion in refusing to dismiss Mendenilla's Petition despite the alleged improper service of summons on him.[35] Petitioner further reasoned that Mendenilla lacked personality to file her Petition[36] and that her filing of a petition only after Assistant City Prosecutor Odronia dismissed Maria Sheila's criminal complaint was considered forum shopping.[37]

In its assailed October 17, 2007 Decision,[38] the Court of Appeals dismissed Pavlow's Petition for Certiorari. Likewise, the Court of Appeals denied Pavlow's motion for reconsideration in its assailed January 25, 2008 Resolution.[39]

Hence, the present Petition for Review on Certiorari[40] was filed.

This petition concerns substantially the same issues as those before the Court of Appeals:

First, whether respondent Cherry L. Mendenilla had personality to file a petition for the issuance of a protection

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[32] *Id*. at 187-193.

[33] *Id*. at 189-190.

[34] *Id*. at 205-248.

[35] *Id*. at 216-229.

[36] *Id*. at 241-245.

[37] *Id*. at 229-241.

[38] *Id*. at 60-87.

[39] *Id*. at 89-90.

[40] *Id*. at 10-55.

order under Section 8 of the Anti-VAWC Law[41] for the benefit of her daughter, Maria Sheila Mendenilla Pavlow;

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[41] Section 8. Protection Orders.– A protection order is an order issued under this Act for the purpose of preventing further acts of violence against a woman or her child specified in Section 5 of this Act and granting other necessary relief. The relief granted under a protection order should serve the purpose of safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life. The provisions of the protection order shall be enforced by law enforcement agencies. The protection orders that may be issued under this Act are the barangay protection order (BPO), temporary protection order (TPO) and permanent protection order (PPO). The protection orders that may be issued under this Act shall include any, some or all of the following reliefs:

(a) Prohibition of the respondent from threatening to commit or committing, personally or through another, any of the acts mentioned in Section 5 of this Act;
(b) Prohibition of the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, directly or indirectly;
(c) Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence, either temporarily for the purpose of protecting the petitioner, or permanently where no property rights are violated, and, if respondent must remove personal effects from the residence, the court shall direct a law enforcement agent to accompany the respondent to the residence, remain there until respondent has gathered his things and escort respondent from the residence;
(d) Directing the respondent to stay away from petitioner and any designated family or household member at a distance specified by the court, and to stay away from the residence, school, place of employment, or any specified place frequented by the petitioner and any designated family or household member;
(e) Directing lawful possession and use by petitioner of an automobile and other essential personal effects, regardless of ownership, and directing the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to the possession of the automobile and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;
(f) Granting a temporary or permanent custody of a child/children to the petitioner;

Second, whether respondent Mendenilla engaged in forum shopping by filing a petition for the issuance of a protection order after a criminal complaint under the Anti-VAWC Law was dismissed by the prosecutor; and

Finally, whether summons was properly served on petitioner Steven R. Pavlow and jurisdiction over his person was validly acquired.

(g) Directing the respondent to provide support to the woman and/or her child if entitled to legal support. Notwithstanding other laws to the contrary, the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by the respondent's employer and for the same to be automatically remitted directly to the woman. Failure to remit and/or withhold or any delay in the remittance of support to the woman and/or her child without justifiable cause shall render the respondent or his employer liable for indirect contempt of court;

(h) Prohibition of the respondent from any use or possession of any firearm or deadly weapon and order him to surrender the same to the court for appropriate disposition by the court, including revocation of license and disqualification to apply for any license to use or possess a firearm. If the offender is a law enforcement agent, the court shall order the offender to surrender his firearm and shall direct the appropriate authority to investigate on the offender and take appropriate action on the matter;

(i) Restitution for actual damages caused by the violence inflicted, including, but not limited to, property damage, medical expenses, childcare expenses and loss of income;

(j) Directing the DSWD or any appropriate agency to provide petitioner temporary shelter and other social services that the petitioner may need; and

(k) Provision of such other forms of relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member, provided petitioner and any designated family or household member consents to such relief.

Any of the reliefs provided under this section shall be granted even in the absence of a decree of legal separation or annulment or declaration of absolute nullity of marriage.

The issuance of a BPO or the pendency of an application for BPO shall not preclude a petitioner from applying for, or the court from granting a TPO or PPO.

We sustain the ruling of the Court of Appeals and deny the Petition.

I

The mother of a victim of acts of violence against women and their children is expressly given personality to file a petition for the issuance of a protection order by Section 9(b) of the Anti-VAWC Law. However, the right of a mother and of other persons mentioned in Section 9 to file such a petition is suspended when the victim has filed a petition for herself. Nevertheless, in this case, respondent Mendenilla filed her petition after her daughter's complaint-affidavit had already been dismissed.

More basic, the filing of Maria Sheila's complaint-affidavit did not even commence proceedings on her own petition for the issuance of a protection order. Preliminary investigation, or proceedings at the level of the prosecutor, does not form part of trial. It is not a judicial proceeding that leads to the issuance of a protection order. Thus, the pendency and subsequent dismissal of Maria Sheila's Complaint-Affidavit did not engender the risk of either *litis pendentia* or *res judicata*, which would serve the basis of a finding of forum shopping by her mother.

I.A

Republic Act No. 9262 specifies three (3) distinct remedies available to victims of acts of "violence against women and their children":[42] first, a criminal complaint; second, a civil

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[42] Defined in Section 3(a) of Rep. Act No. 9262, as follows:

Section. 3. Definition of Terms. – As used in this Act, (a) "Violence against women and their children" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:

action for damages; and finally, a civil action for the issuance of a protection order.

A criminal complaint may be resorted to when the act of violence against women and their children is committed through any, some, or all of the nine (9) means which Section 5 of the

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A. "Physical violence" refers to acts that include bodily or physical harm;

B. "Sexual violence" refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:

a) rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim's body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;

b) acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;

c) Prostituting the woman or her child.

C. "Psychological violence" refers to acts or omissions causing or likely to cause mental or emotional ' suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and marital infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

D. "Economic abuse" refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:

1. withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;

2. deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;

3. destroying household property;

4. controlling the victim's own money or properties or solely controlling the conjugal money or properties.

Anti-VAWC Law[43] specifies as constitutive of "[t]he *crime* of violence against women and their children." If found guilty, the perpetrator shall suffer the penalties stipulated under

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[43] Rep. Act No. 9262, Sec. 5 provides:

Section 5. Acts of Violence Against Women and Their Children. – The crime of violence against women and their children is committed through any of the following acts:

(a) Causing physical harm to the woman or her child;

(b) Threatening to cause the woman or her child physical harm;

(c) Attempting to cause the woman or her child physical harm;

(d) Placing the woman or her child in fear of imminent physical harm;

(e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or to desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or her child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:

  (1) Threatening to deprive or actually depriving the woman or her child of custody or access to her/his family;

  (2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;

  (3) Depriving or threatening to deprive the woman or her child of a legal right;

  (4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;

(f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;

(g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;

(h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:

Section 6,[44] *i.e.*, imprisonment and payment of a fine. In addition, he or she shall be made to undergo psychological counselling or psychiatric treatment.

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(1) Stalking or following the woman or her child in public or private places;

(2) Peering in the window or lingering outside the residence of the woman or her child;

(3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;

(4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and

(5) Engaging in any form of harassment or violence;

(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or denial of access to the woman's child/children.

[44] Republic Act No. 9262, Sec. 6 provides:

Section. 6. Penalties. – The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

(a) Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code. If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of *prision mayor*; those constituting less serious physical injuries shall be punished by *prision correccional*; and those constituting slight physical injuries shall be punished by *arresto mayor*.

Acts falling under Section 5(b) shall be punished by imprisonment of two (2) degrees lower than the prescribed penalty for the consummated crime as specified in the preceding paragraph but shall in no case be lower than *arresto mayor*.

(b) Acts falling under Section 5(c) and 5(d) shall be punished by *arresto mayor*;

(c) Acts falling under Section 5(e) shall be punished by *prision correccional*;

(d) Acts falling under Section 5(f) shall be punished by *arresto mayor*;

(e) Acts falling under Section 5(g) shall be punished by *prision mayor*;

(f) Acts falling under Section 5(h) and Section 5(i) shall be punished by *prision mayor*.

A civil action for damages may be resorted to pursuant to Section 36 of the Anti-VAWC Law:

Section 36. Damages. — Any victim of violence under this Act shall be entitled to actual, compensatory, moral and exemplary damages.

Rule V, Section 35 of the Implementing Rules and Regulations of the Anti-VAWC Law[45] states that when a criminal action is also available and is resorted to, "[t]he civil action for damages is deemed instituted with the criminal action, unless an independent civil action for damages is filed."

A protection order is issued "for the purpose of preventing further acts of violence against a woman or her child . . . and granting other necessary relief;"[46] thereby "safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life."[47] If issued, it shall specify any, some, or all of the following reliefs:

(a) Prohibition of the respondent from threatening to commit or committing, personally or through another, any of the acts mentioned in Section 5 of this Act;

(b) Prohibition of the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, directly or indirectly;

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in this section. In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (₱100,000.00) but not more than Three hundred thousand pesos (₱300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

[45] Rep. Act No. 9262, Sec. 35 provides:

Section 35. Damages. – Any victim-survivor of violence under the Act shall be entitled to actual, compensatory, moral and exemplary damages.

The civil action for damages is deemed instituted with the criminal action, unless an independent civil action for damages is filed.

[46] Rep. Act No. 9262, Sec. 8.

[47] Rep. Act No. 9262, Sec. 8.

(c) Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence, either temporarily for the purpose of protecting the petitioner, or permanently where no property rights are violated, and, if respondent must remove personal effects from the residence, the court shall direct a law enforcement agent to accompany the respondent to the residence, remain there until respondent has gathered his things and escort respondent from the residence;

(d) Directing the respondent to stay away from petitioner and any designated family or household member at a distance specified by the court, and to stay away from the residence, school, place of employment, or any specified place frequented by the petitioner and any designated family or household member;

(e) Directing lawful possession and use by petitioner of an automobile and other essential personal effects, regardless of ownership, and directing the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to the possession of the automobile and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

(f) Granting a temporary or permanent custody of a child/ children to the petitioner;

(g) Directing the respondent to provide support to the woman and/or her child if entitled to legal support. Notwithstanding other laws to the contrary, the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by the respondent's employer for the same to be automatically remitted directly to the woman. Failure to remit and/or withhold or any delay in the remittance of support to the woman and/or her child without justifiable cause shall render the respondent or his employer liable for indirect contempt of court;

(h) Prohibition of the respondent from any use or possession of any firearm or deadly weapon and order him to surrender the same to the court for appropriate disposition by the court, including revocation of license and disqualification to apply for any license to use or possess a firearm. If the offender

is a law enforcement agent, the court shall order the offender to surrender his firearm and shall direct the appropriate authority to investigate on the offender and take appropriate action on the matter;

(i) Restitution for actual damages caused by the violence inflicted, including, but not limited to, property damage, medical expenses, childcare expenses and loss of income;

(j) Directing the DSWD or any appropriate agency to provide petitioner temporary shelter and other social services that the petitioner may need; and

(k) Provision of such other forms of relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member, provided petitioner and any designated family or household member consents to such relief.[48]

Republic Act No. 9262 allows for the issuance of three (3) kinds of protection orders: a Barangay Protection Order, a Temporary Protection Order, and a Permanent Protection Order. A Barangay Protection Order is issued by a Punong Barangay or by a Barangay Kagawad.[49] Temporary protection orders and

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[48] Rep. Act No. 9262, Sec. 8.

[49] Rep. Act No. 9262, Sec. 14 provides:

Section 14. Barangay Protection Orders (BPOs); Who May Issue and How. – Barangay Protection Orders (BPOs) refer to the protection order issued by the Punong Barangay ordering the perpetrator to desist from committing acts under Section 5(a) and (b) of this Act. A Punong Barangay who receives applications for a BPO shall issue the protection order to the applicant on the date of filing after ex parte determination of the basis of the application. If the Punong Barangay is unavailable to act on the application for a BPO, the application shall be acted upon by any available Barangay Kagawad. If the BPO is issued by a Barangay Kagawad, the order must be accompanied by an attestation by the Barangay Kagawad that the Punong Barangay was unavailable at the time for the issuance of the BPO. BPOs shall be effective for fifteen (15) days. Immediately after the issuance of an ex parte BPO, the Punong Barangay or Barangay Kagawad shall personally serve a copy of the same on the respondent, or direct any barangay official to effect its personal service.

The parties may be accompanied by a non-lawyer advocate in any proceeding before the Punong Barangay.

permanent protection orders are judicial issuances obtained through trial courts.[50]

As its name denotes, a temporary protection order is a provisional relief. It shall be effective for 30 days, following a court's "ex parte determination that such order should be issued."[51] Within these 30 days, a hearing to determine the propriety of issuing permanent protection order must be conducted. The temporary protection order itself "shall include notice of the date of the hearing on the merits of the issuance of a [permanent protection order]." Following the conduct of a hearing, a permanent protection order may be issued and "shall be effective until revoked by a court upon application of the person in whose favor the order was issued."[52]

I.B

Section 9 of the Anti-VAWC Law enumerates the persons who may apply for the issuance of a protection order:

Section 9. Who May File Petition for Protection Orders. — A petition for protection order may be filed by any of the following:

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[50] The second sentence of Section 10 of Rep. Act No. 9262 states: "An application for a TPO or PPO may be filed in the regional trial court, metropolitan trial court, municipal trial court, municipal circuit trial court with territorial jurisdiction over the place of residence of the petitioner: Provided, however, That if a family court exists in the place of residence of the petitioner, the application shall be filed with that court."

[51] Rep. Act No. 9262, Sec. 15 provides:

Section 15. Temporary Protection Orders. – Temporary Protection Orders (TPOs) refers to the protection order issued by the court on the date of filing of the application after ex parte determination that such order should be issued. A court may grant in a TPO any, some or all of the reliefs mentioned in this Act and shall be effective for thirty (30) days. The court shall schedule a hearing on the issuance of a PPO prior to or on the date of the expiration of the TPO. The court shall order the immediate personal service of the TPO on the respondent by the court sheriff who may obtain the assistance of law enforcement agents for the service. The TPO shall include notice of the date of the hearing on the merits of the issuance of a PPO.

[52] Rep. Act No. 9262, Sec. 16.

(a) the offended party;

(b) *parents or guardians of the offended party*;

(c) ascendants, descendants or collateral relatives within the fourth civil degree of consanguinity or affinity;

(d) officers or social workers of the DSWD or social workers of local government units (LGUs);

(e) police officers, preferably those in charge of women and children's desks;

(f) Punong Barangay or Barangay Kagawad;

(g) lawyer, counselor, therapist or healthcare provider of the petitioner;

(h) at least two (2) concerned responsible citizens of the city or municipality where the violence against women and their children occurred and who has personal knowledge of the offense committed. (Emphasis supplied)

As is clear from this enumeration, a petition for the issuance of protection order is not limited to the alleged victim herself. The victim's mother — as is the case with respondent Mendenilla — is explicitly given the capacity to apply for a protection order for the benefit of her child. By this clear statutory provision, Mendenilla had the requisite personality to file a petition for the issuance of a protection order in favor of Maria Sheila.

I.C

Petitioner claims, however, that Maria Sheila's prior filing of a criminal complaint precluded Mendenilla's subsequent filing of a petition for the issuance of a protection order. He capitalizes on the second paragraph of Section 8, as well as on Section 33 of A.M. No. 04-10-11-SC,[53] the procedural rules issued by this Court governing proceedings under the Anti-VAWC Law.

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[53] Rule on Violence Against Women and Their Children, (2004).

Section 8 of A.M. No. 04-10-11-SC reads:

Section 8. Who may file petition. — A petition for protection order may be filed by any of the following:

(a) The offended party;

(b) Parents or guardians of the offended party;

(c) Ascendants, descendants or collateral relatives of the offended party within the fourth civil degree of consanguinity or affinity;

(d) Officers or social workers of the Department of Social Welfare and Development (DSWD) or social workers of local government units (LGUs);

(e) Police officers, preferably those in charge of women and children's desks;

(f) Punong Barangay or Barangay Kagawad;

(g) lawyer, counselor, therapist or healthcare provider of the petitioner; or

(h) At least two concerned, responsible citizens of the place where the violence against women and their children occurred and who have personal knowledge of the offense committed.

The filing of a petition for protection order by the offended party suspends the right of all other authorized parties to file similar petitions. A petition filed by the offended party after the filing of a similar petition by an authorized party shall not be dismissed but shall be consolidated with the petition filed earlier. (Emphasis supplied)

Section 33 of A.M. No. 04-10-11-SC reads:

Section 33. When petition may proceed separately from or be deemed instituted with criminal action. — (a) An offended party may file a petition for protection order ahead of a criminal action arising from the same act. The same shall proceed separately from the criminal action and shall require only a preponderance of evidence. Upon motion of the petitioner, the court may consolidate the petition with the criminal action.

(b) *Where the offended party chooses to file a criminal action, the petition for protection order is deemed instituted with the criminal*

action, unless the offended party reserves the right to institute it separately. (Emphasis supplied)

Petitioner proceeds to argue that Mendenilla's filing of a separate petition supposedly anchored on the same factual premises, and seeking the same reliefs as those of the criminal complaint filed by Maria Sheila is an act of forum-shopping. He, therefore, claims that Mendenilla's petition should have been dismissed.

I.D

Petitioner's conclusions are misplaced.

The word used by Section 8 is "suspend." To suspend is to momentarily, temporarily, or provisionally hold in abeyance. It is not to perpetually negate, absolutely cancel, or otherwise obliterate. The right of persons other than the victim to file a petition for the issuance of a protection order therefore persists; albeit, they may not exercise such right for as long as the petition filed by the victim subsists.

Mendenilla's petition for the issuance of a protection order was filed with the Quezon City Regional Trial Court after Assistant City Prosecutor Odronia had already dismissed Maria Sheila's complaint for slight physical injuries and maltreatment under the Anti-VAWC Law. Thus, even if Maria Sheila's Complaint came with a petition for the issuance of a protection order and even as Section 8 of A.M. No. 04-10-11-SC stipulates the suspension of other people's right to file petitions for the issuance of a protection order, this suspension is rendered inefficacious by the remission of Maria Sheila's prior petition. Stated otherwise, there was no longer a prior petition to compel a suspension.

I.E

Petitioner's position, however, fails to account for an even more fundamental and pivotal detail: Assistant City Prosecutor Odronia's dismissal of the complaint-affidavit filed by Maria Sheila *came as a result of a preliminary investigation*. This meant that, to begin with, there was not even a prior judicial

proceeding which could lead to the issuance of a protection order. The criminal action in which Maria Sheila would have been deemed to have impliedly instituted her own petition for the issuance of a protection order did not even commence.

Jurisprudence has long settled that preliminary investigation does not form part of trial.[54] Investigation for the purpose of determining whether an actual charge shall subsequently be filed against the person subject of the investigation is a purely administrative, rather than a judicial or quasi-judicial, function.[55] It is not an exercise in adjudication: no ruling is made on the rights and obligations of the parties, but merely evidentiary appraisal to determine if it is worth going into actual adjudication.[56]

The dismissal of a complaint on preliminary investigation by a prosecutor "cannot be considered a valid and final judgment."[57] As there is no former final judgment or order on the merits rendered by the court having jurisdiction over both the subject matter and the parties, there could not have been *res judicata* — actual or looming as to bar one (1) of several proceedings on account of *litis pendentia* — as to bar Mendenilla's petition for being an act of forum shopping.

Res judicata is the conceptual backbone upon which forum shopping rests. *City of Taguig v. City of Makati*,[58] explained in detail the definition of forum shopping, how it is committed, and the test for determining if it was committed. This test relies on two (2) alternative propositions: *litis pendentia* and *res*

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[54] *Trinidad v. Marcelo*, 564 Phil. 382, 389 (2007) [Per *J*. Carpio Morales, *En Banc*].

[55] *Encinas v. Agustin*, 709 Phil. 236, 257 (2013) [Per *C.J.* Sereno, *En Banc*].

[56] *Id*.

[57] *Apolinario v. Flores*, 541 Phil. 108, 118 (2007) [Per *J*. Carpio, Second Division].

[58] *City of Taguig v. City of Makati*, G.R. No. 208393, June 15, 2016 [Per *J*. Leonen, Second Division].

judicata. Even then, *litis pendentia* is itself a concept that merely proceeds from the concept of *res judicata*:

Top Rate Construction & General Services, Inc. v. Paxton Development Corporation explained that:

> Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.
>
> . . . . . .
>
> Jurisprudence has recognized that forum shopping can be committed in several ways:
>
> (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*). (Emphasis in the original)
>
> . . . . . .
>
> The test for determining forum shopping is settled. In *Yap v. Chua, et al.*:
>
> To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.

For its part, *litis pendentia* "refers to that situation wherein another action is pending between the same parties for the same cause of

action, such that the second action becomes unnecessary and vexatious." For *litis pendentia* to exist, three (3) requisites must concur:

> The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

On the other hand, *res judicata* or prior judgment bars a subsequent case when the following requisites are satisfied:

> (1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; (4) there is — between the first and the second actions — identity of parties, of subject matter, and of causes of action.[59] (Citations omitted)

Encinas v. Agustin[60] explained how a ruling in an investigative exercise — such as fact-finding investigations and preliminary investigation — could not be the basis of *res judicata*, or of forum shopping. Its exhaustive and extensive discussion is worth quoting at length:

> [W]e rule that the dismissal of the BFP Complaint does not constitute *res judicata* in relation to the CSCRO Complaint. Thus, there is no forum-shopping on the part of respondents.
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> . . . . . .
>
> In order that *res judicata* may bar the institution of a subsequent action, the following requisites must concur: (a) the former judgment must be final; (b) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be between the first and the second actions (i) identity of parties, (ii) identity of subject matter, and (iii) identity of cause of action.
>
> A judgment may be considered as one rendered on the merits "when it determines the rights and liabilities of the parties based on the

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[59] *Id.*

[60] *Encinas v. Agustin*, 709 Phil. 236 (2013) [Per *C.J.* Sereno, *En Banc*].

disclosed facts, irrespective of formal, technical or dilatory objections;" or when the judgment is rendered "after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point."

In this case, there is no "judgment on the merits" in contemplation of the definition above. The dismissal of the BFP Complaint in the Resolution dated 05 July 2005 was the result of a fact-finding investigation for purposes of determining whether a formal charge for an administrative offense should be filed. Hence, no rights and liabilities of parties were determined therein with finality.

The [Court of Appeals] was correct in ruling that the doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, and not to the exercise of administrative powers. Administrative powers here refer to those purely administrative in nature, as opposed to administrative proceedings that take on a quasi-judicial character.

In administrative law, a quasi-judicial proceeding involves (a) taking and evaluating evidence; (b) determining facts based upon the evidence presented; and (c) rendering an order or decision supported by the facts proved. The exercise of quasi-judicial functions involves a determination, with respect to the matter in controversy, of what the law is; what the legal rights and obligations of the contending parties are; and based thereon and the facts obtaining, the adjudication of the respective rights and obligations of the parties ...

. . . . . .

The Court has laid down the test for determining whether an administrative body is exercising judicial or merely investigatory functions: adjudication signifies the exercise of the power and authority to adjudicate upon the rights and obligations of the parties. Hence, if the only purpose of an investigation is to evaluate the evidence submitted to an agency based on the facts and circumstances presented to it, and if the agency is not authorized to make a final pronouncement affecting the parties, then there is an absence of judicial discretion and judgment.

In this case, an analysis of the proceedings before the BFP yields the conclusion that they were purely administrative in nature and constituted a fact-finding investigation for purposes of determining whether a formal charge for an administrative offense should be filed against petitioner.

. . . . . .

The proceedings before the BFP were merely investigative, aimed at determining the existence of facts for the purpose of deciding whether to proceed with an administrative action. ***This process can be likened to a public prosecutor's preliminary investigation, which entails a determination of whether there is probable cause to believe that the accused is guilty, and whether a crime has been committed.***

The ruling of this Court in *Bautista v. Court of Appeals* is analogously applicable to the case at bar. In that case, we ruled that the preliminary investigation conducted by a public prosecutor was merely inquisitorial and was definitely not a quasi-judicial proceeding:

> A closer scrutiny will show that preliminary investigation is very different from other quasi-judicial proceedings. A quasi-judicial body has been defined as "an organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication or rule-making."
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> . . . . . .
>
> On the other hand, ***the prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication*** nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. ***It is not a trial of the case on the merits*** and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal. (Emphases supplied)

This principle is further highlighted in *MERALCO v. Atilano*, in which this Court clearly reiterated that a public prosecutor, in conducting a preliminary investigation, is not exercising a quasi-judicial function. In a preliminary investigation, the public prosecutor inspects the records and premises, investigates the activities of persons or entities coming under the formers' jurisdiction, or secures or requires the disclosure of information by means of accounts, records, reports, statements, testimony of witnesses, and production of documents. In contrast, judicial adjudication signifies the exercise of power and

authority to adjudicate upon the rights and obligations of concerned parties, *viz.*:

> This is reiterated in our ruling in *Spouses Balangauan v. Court of Appeals, Special Nineteenth Division, Cebu City*, where we pointed out that a preliminary investigation is not a quasi-judicial proceeding, and the DOJ is not a quasi-judicial agency exercising a quasi-judicial function when it reviews the findings of a public prosecutor regarding the presence of probable cause. A quasi-judicial agency performs adjudicatory functions when its awards determine the rights of parties, and its decisions have the same effect as a judgment of a court. [This] is not the case when a public prosecutor conducts a preliminary investigation to determine probable cause to file an information against a person charged with a criminal offense, or when the Secretary of Justice [reviews] the former's order[s] or resolutions on determination of probable cause.
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> In *Odchigue-Bondoc*, we ruled that when the public prosecutor conducts preliminary investigation, he thereby exercises investigative or inquisitorial powers. Investigative or inquisitorial powers include the powers of an administrative body to inspect the records and premises, and investigate the activities of persons or entities coming under his jurisdiction, or to secure, or to require the disclosure of information by means of accounts, records, reports, statements, testimony of witnesses, and production of documents. This power is distinguished from judicial adjudication which signifies the exercise of power and authority to adjudicate upon the rights and obligations of concerned parties. Indeed, it is the exercise of investigatory powers which sets a public prosecutor apart from the court. (Emphasis supplied)[61] (Emphasis supplied, citations omitted)

Although the prosecutor's dismissal of a criminal complaint does not give rise to *res judicata* vis-a-vis subsequent civil and quasi-judicial proceedings, neither does it engender double jeopardy — so-called "res judicata in prison grey" — should the alleged perpetrator's criminal liability still be subsequently pursued. In *Trinidad v. Marcelo*:[62]

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[61] *Id.* at 254-260.

[62] *Trinidad v. Marcelo*, 564 Phil. 382 (2007) [Per *J.* Carpio Morales, *En Banc*].

Petitioner's arguments — that *res judicata* applies since the Office of the Ombudsman twice found no sufficient basis to indict him in similar cases earlier filed against him, and that the *Agan* cases cannot be a supervening event or evidence *per se* to warrant a reinvestigation on the same set of facts and circumstances — do not lie.

Res judicata is a doctrine of civil law and thus has no bearing on criminal proceedings.

But even if petitioner's argument were to be expanded to contemplate "*res judicata* in prison grey" or the criminal law concept of double jeopardy, this Court still finds it inapplicable to bar the reinvestigation conducted by the Office of the Ombudsman. For the dismissal of a case during preliminary investigation does not constitute double jeopardy, preliminary investigation not being part of the trial.[63] (Citations omitted)

Likewise, in *Jamaca v. People*:[64]

It should be borne in mind that for a claim of double jeopardy to prosper, petitioner has to prove that a first jeopardy has attached prior to the second. As stated in *Braza v. Sandiganbayan*, "[t]he first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent." In this case, the complaint before the Office of the Deputy Ombudsman for the Military was dismissed as early as the preliminary investigation stage, thus, there was as yet, no indictment to speak of. No complaint or Information has been brought before a competent court. Hence, none of the aforementioned events has transpired for the first jeopardy to have attached.

In *Vincoy v. Court of Appeals*, which is closely analogous to the present case, the private complainant therein initially filed a complaint with the Office of the City Prosecutor of Pasay City, but said office dismissed the complaint. Private complainant then re-filed the complaint with the Office of the City Prosecutor of Pasig City. The

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[63] *Id*. at 389.

[64] G.R. No. 183681, July 27, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/183681.pdf> [Per *J*. Peralta, Third Division].

Office of the Prosecutor of Pasig City found probable cause and filed the Information against the accused therein. In said case, the Court categorically held that:

> The dismissal of a similar complaint . . . filed by [private complainant] before the City Prosecutor's Office of Pasay City will not exculpate the petitioner. The case cannot bar petitioner's prosecution. It is settled that the dismissal of a case during its preliminary investigation does not constitute double jeopardy since a preliminary investigation is not part of the trial and is not the occasion for the full and exhaustive display of the parties' evidence but only such as may engender a well-grounded belief that an offense has been committed and accused is probably guilty thereof. For this reason, it cannot be considered equivalent to a judicial pronouncement of acquittal.[65] (Citations omitted)

As deftly noted both by Judge Giron-Dizon and the Court of Appeals, it was not within the prosecutor's competence to issue or to direct the issuance of a protection order. Assistant City Prosecutor Odronia could not have adjudicated the parties' rights and obligation. That is, he was not in a position to rule on Maria Sheila's right to be protected or on petitioner's duty to desist from acts of violence:

> Another allegation in the omnibus motion ... is that, plaintiff is engaged in forum-shopping which merits the dismissal of the petition because there is a pending criminal complaint for violation of R.A. 9262 with the City Prosecutor's Office of Makati City, which is docketed as I.S. No. 05E-6413 and handled by Asst. City Prosecutor [Romel Odronia]. The said criminal complaint involves the same parties and the same issue.
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> The Court is not persuaded. Granting arguendo that violation of R.A. 9262 is included in the criminal complaint; the Asst. City Prosecutor is devoid of power to issue a Temporary Protection Order. Consequently, the aggrieved party in R.A. 9262 would have no other immediate recourse but to file a TPO before the court.[66]

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[65] *Id*. at 4-5.

[66] *Rollo*, p. 84. The Assistant City Prosecutor's name was mistakenly typed as "Rommel Ordonio."

Failing in the most basic requisites of forum shopping — there not having been an actual or potential final judgment on the merits rendered by a competent court in the course of criminal proceedings — petitioner's allegations regarding respondent Mendenilla's alleged lack of personality to file suit and forum shopping must fail.

II

Petitioner further assails the manner of service of summons. He claims that service of summons upon his employee, Tolentino, at Unit 1503, Grand Tower Condominium, 150 L.P. Leviste St., Makati City,[67] while he was out of the country was ineffectual and failed to vest jurisdiction over his person in the Regional Trial Court.

He theorizes that in cases where a temporary protection order is issued ex parte by a trial court, the temporary protection order itself is the summons.[68] He adds that Section 15 of the Anti-VAWC Law and Section 15 of A.M. No. 04-10-11-SC stipulate personal service — and absolutely no other means of service — of the temporary protection order upon the respondent.[69] Thus, service through Tolentino was ineffectual.

II.A

Petitioner's overly pedantic appreciation of the Anti-VAWC Law and of A.M. No. 04-10-11-SC is grossly erroneous. The non-use of the precise term "summons" in the Anti-VAWC Law, its Implementing Rules and Regulations, and its procedural rules provided in A.M. No. 04-10-11-SC does not justify the equation of a temporary protection order with summons and the exclusion of the use of summons.

The nature and purpose of summons is markedly different from those of a protection order. This prevents the latter from being a substitute for the former.

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[67] *Id*. at 181 and 81.

[68] *Id*. at 29.

[69] *Id*. at 27-30.

Summons is a procedural tool. It is a writ by which the defendant is notified that an action was brought against him or her.[70] In an action in personam, brought to enforce personal rights and obligations, jurisdiction over the person of the defendant is mandatory. In such actions, therefore, summonses serve not only to notify the defendant of the filing of an action, but also to enable acquisition of jurisdiction over his person.[71]

A protection order is not a procedural mechanism, which is imperative for the progression of an initiated action. Rather, it is itself a substantive relief which "prevent[s] further acts of violence against a woman or her child specified in Section 5 of [the Anti-VAWC Law] and granting other necessary relief."[72] Protection orders issued by courts come in two (2) forms: temporary and permanent. The distinction, as their respective names denote, is their duration. A temporary protection order is provisional, whereas a permanent protection order is lasting or final.

When a case is of particular urgency, a trial court may ex parte issue a temporary protection order, granting the reliefs under Section 8 of the Anti-VAWC Law in the interim, that is, for a 30-day period.[73] Precisely because the case is of such particular urgency that a temporary protection order is deemed necessary. Section 15 of the Anti-VAWC Law includes a stipulation that the temporary protection order must be immediately personally served on the respondent. It provides, "The court shall order the immediate personal service of the

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[70] *Cano-Guttierez v. Guttierez*, 395 Phil. 903, 910 (2000) [Per *J*. Kapunan, First Division]; *Guanzon v. Arradaza*, 539 Phil. 367, 374 (2006) [Per *J*. Chico-Nazario, First Division].

[71] *Umandap v. Sabio*, 393 Phil. 657, 663 (2000) [Per *J*. Gonzaga-Reyes, Third Division]. Cf. actions in rem or quasi in rem where what is imperative is jurisdiction over the res. In these actions, service of summons upon the defendant primarily serves the interest of due process, and not so much the purpose of acquiring jurisdiction over his or her person.

[72] Rep. Act No. 9262, Sec. 8.

[73] Rep. Act No. 9262, Sec. 15.

[temporary protection order] on the respondent by the court sheriff who may obtain the assistance of law enforcement agents for the service."

To determine whether the temporary protection order should be made permanent and a complete, substantive relief extended to the alleged victim, Section 15 of the Anti-VAWC Law mandates the conduct of hearing within the 30-day effectivity of the temporary protection order. The clear and specific singular purpose of the hearing is manifest in Section 15: "[t]he court shall schedule a hearing *on the issuance of a [permanent protection order]* prior to or on the date of the expiration of the [temporary protection order]." Because a hearing is to be conducted, the respondent must necessarily be informed. Thus, Section 15 further states that, "[t]he [temporary protection order] shall include notice of the date of the hearing on the merits of the issuance of a [permanent protection order]."

Clearly then, summons and temporary protection orders are entirely different judicial issuances. It is true that the latter also serves the purpose of conveying information. However, this information pertains not to the filing of an action but merely to the schedule of an upcoming hearing. The similarities of a summons and a protection order begin and end with their informative capacity. At no point does the Anti-VAWC Law intimate that the temporary protection order is the means for acquiring jurisdiction over the person of the respondent.

Section 15 of the Anti-VAWC Law's reference to "immediate personal service" is an incident of the underlying urgency which compelled the ex parte issuance of a protection order. It should not be construed as a restriction on the manner of acquisition of jurisdiction over the person of the respondent. Otherwise, far from relieving a manifest urgency, it stifles a civil action for the issuance of a protection order right at the moment of its initiation. Construed as such, a temporary protection order is twisted to a shrewdly convenient procedural tool for defeating the very purposes for which it was issued in the first place.

II.B

Section 1 of A.M. No. 04-10-11-SC expressly states that while it governs petitions for the issuance of protection orders under the Anti-VAWC Law, "[t]he Rules of Court shall apply suppletorily." In the silence of A.M. No. 04-10-11-SC, service of summons — the means established by the 1997 Rules of Civil Procedure for informing defendants and/or respondents of the filing of adverse actions, and for the acquisition of jurisdiction over their persons — remains efficacious.

Petitioner, though an American citizen, was admittedly a resident of the Philippines as of September 7, 2005, the date when Deputy Sheriff Velasco attempted to personally serve summons on him.[74] On September 7, 2005, however, he was not in the Philippines. It was this circumstance which, according to the Sheriff's Report,[75] impelled substituted service of summons through Tolentino.

Rule 14, Section 6 of the 1997 Rules of Civil Procedure clearly articulates a preference for personal service of summons:

> Section 6. Service in person on defendant. — Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

Rule 14, Section 6 recognizes two (2) alternative ways through which personal service may be effected: first, by actually handing summons to the defendant, which presupposes the defendant's willingness to accept the summons; and second, by mere tender, if the defendant refuses to accept.

If personal service is impracticable within a reasonable time, substituted service may be resorted to in lieu of personal service. Rule 14, Section 7 states:

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[74] *Rollo*, p. 81.

[75] *Id.* at 181-182.

Section 7. Substituted service. — If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

In the case of residents who are temporarily not in the Philippines, another alternative means for serving summons is through extraterritorial service. Rule 14, Section 16 states:

Section 16. Residents temporarily out of the Philippines. — When any action is commenced against a defendant who ordinarily resides within the Philippines, but who is temporarily out of it, service may, by leave of court, be also effected out of the Philippines, as under the preceding section.

The preceding Section 15 spells out the terms of extraterritorial service:

Section 15. Extraterritorial service. — When the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under Section 6; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer.

II.C

Jurisprudence has long settled that, with respect to residents temporarily out of the Philippines, the availability of extraterritorial services does not preclude substituted service.

Resort to substituted service has long been held to be fair, reasonable and just. This Court has noted that a contrary, restrictive view is that which defeats the ends of justice. It has been emphasized that residents who temporarily leave their residence are responsible for ensuring that their affairs are in order, and that, upon their return, they shall attend to exigencies that may have arisen. In *Montalban v. Maximo*:[76]

> This brings us to the question of procedural due process. Substituted service . . . upon a temporarily absent resident, it has been held, is wholly adequate to meet the requirements of due process. The constitutional requirement of due process exacts that the service be such as may be reasonably expected to give the notice desired. Once the service provided by the rules reasonably accomplishes that end, the requirement of justice is answered; the traditional notions of fair play are satisfied; due process is served.
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> . . . . . .
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> Chief Justice Moran shares this view. Commenting on Section 18, Rule 14, he states: "Since the defendant is residing in the Philippines, jurisdiction over his person may be acquired by Philippine courts by substituted service of summons under Section 8. But extraterritorial service is allowed also by leave of court according to the above provision [Section 18]." Justice Martin regards the word "residence" in Section 8 as "the place where the person named in the summons is living at the time when the service is made, even though he may be temporarily out of the state at the time."
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> This construction is but fair. It is in accord with substantial justice. The burden on a plaintiff is not to be enlarged with a restrictive construction as desired by defendant here. Under the rules, a plaintiff, in the initial stage of suit, is merely required to know the defendant's "dwelling house or residence" or his "office or regular place of business" — and no more. He is not asked to investigate where a resident defendant actually is, at the precise moment of filing suit. Once defendant's dwelling house or residence or office or regular place of business is known, he can expect valid service of summons to be made on "some person of suitable age and discretion then residing" in defendant's dwelling house or residence, or on "some competent person in charge" of his office or regular place of business.

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[76] 131 Phil. 154 (1968) [Per *J.* Sanchez, *En Banc*].

By the terms of the law, plaintiff is not even duty-bound to see to it that the person upon whom service was actually made delivers the summons to defendant or informs him about it. The law presumes that for him.

It is immaterial then that defendant does not in fact receive actual notice. This will not affect the validity of the service. *Accordingly, the defendant may be charged by a judgment in personam as a result of legal proceedings upon a method of service which is not personal, "which in fact may not become actual notice to him," and which may be accomplished in his lawful absence from the country.* For, the rules do not require that papers be served on defendant personally or a showing that the papers were delivered to defendant by the person with whom they were left.

Reasons for the views just expressed are not wanting. A man temporarily absent from this country leaves a definite place of residence, a dwelling where he lives, a local base, so to speak, to which any inquiry about him may be directed and where he is bound to return. Where one temporarily absents himself, he leaves his affairs in the hands of one who may be reasonably expected to act in his place and stead; to do all that is necessary to protect his interests; and to communicate with him from time to time any incident of importance that may affect him or his business or his affairs. It is usual for such a man to leave at his home or with his business associates information as to where he may be contacted in the event a question that affects him crops up. *If he does not do what is expected of him, and a case comes up in court against him, he cannot in justice raise his voice and say that he is not subject to the processes of our courts. He cannot stop a suit from being filed against him upon a claim that he cannot be summoned at his dwelling house or residence or his office or regular place of business.*

Not that he cannot be reached within a reasonable time to enable him to contest a suit against him. There are now advanced facilities of communication. Long distance telephone calls and cablegrams make it easy for one he left behind to communicate with him.

In the light of the foregoing, we find ourselves unwilling to concede that substituted service ... may be down-graded as an ineffective means to bring temporarily absent residents within the reach of our courts.[77] (Emphasis supplied, citations omitted)

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[77] *Id.* at 162-165.

We see no reason for holding as ineffectual the substituted service of summons, which was recounted in the Sheriff's Report dated September 8, 2005.

Rule 14, Section 7 stipulates that substituted service may be resorted to "[i]f, for justifiable causes, the defendant cannot be [personally] served within a reasonable time."

This case pertains to alleged acts of violence against a woman. Petitioner was alleged to have physically and psychologically assaulted his wife, Maria Sheila, on multiple occasions. Maria Sheila was noted to have had to be confined in a medical facility on account of petitioner's assaults. Maria Sheila's mother found herself having to intervene to protect her daughter. The totality of these entails an urgency which, by statute, justifies the issuance of a temporary protection order even as the respondent to Mendenilla's petition was yet to be heard. This is an urgency, which the Regional Trial Court actually found to be attendant as it did, in fact, issue a temporary protection order.

Time was of the essence. The exigencies of this case reveal a backdrop of justifiable causes and how, by the convenience of petitioner Steven Pavlow's temporary absence, immediate personal service was rendered impossible. These exigencies justified substituted service of summons upon petitioner during his temporary absence through Monette Tolentino, a person of suitable age and discretion, who also resided at petitioner's own residence. Jurisdiction over petitioner's person was then validly acquired, and the dismissal of respondent Cherry L. Mendenilla's petition on this score was correctly held by Judge Natividad Giron-Dizon to be unwarranted.

WHEREFORE, the Petition is **DENIED**. The assailed October 17, 2007 Decision and January 25, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 94540 are **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Mendoza*, and *Martires, JJ.*, concur.

THIRD DIVISION

[G.R. No. 185320. April 19, 2017]

ROSENDO DE BORJA, *petitioner, vs.* **PINALAKAS NA UGNAYAN NG MALILIIT NA MANGINGISDA NG LUZON, MINDANAO AT VISAYAS ("PUMALU-MV"), PAMBANSANG KATIPUNAN NG MGA SAMAHAN SA KANAYUNAN ("PKSK") and TAMBUYOG DEVELOPMENT CENTER, INC. ("TDCI"),** *respondents;*

REPUBLIC OF THE PHILIPPINES, *oppositor.*

[G.R. No. 185348. April 19, 2017]

TAMBUYOG DEVELOPMENT CENTER, INC., represented by DINNA L. UMENGAN, *petitioner, vs.* **ROSENDO DE BORJA, PINALAKAS NA UGNAYAN NG MALILIIT NA MANGINGISDA NG LUZON, MINDANAO AT VISAYAS ("PUMALU-MV"), represented by CESAR A. HAWAK, and PAMBANSANG KATIPUNAN NG MGA SAMAHAN SA KANAYUNAN ("PKSK"), represented by RUPERTO B. ALEROZA,** *respondents;*

REPUBLIC OF THE PHILIPPINES, *oppositor.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; REQUISITES.— For a petition for declaratory relief to prosper, it must be shown that (a) there is a justiciable controversy, (b) the controversy is between persons whose interests are adverse, (c) the party seeking the relief has a legal interest in the controversy, and (d) the issue invoked is ripe for judicial determination.

2. ID.; ID.; ID.; ID.; ID.; JUSTICIABLE CONTROVERSY; REFERS TO A DEFINITE AND CONCRETE DISPUTE TOUCHING ON THE LEGAL RELATIONS OF PARTIES HAVING ADVERSE LEGAL INTERESTS, WHICH MAY BE RESOLVED BY A COURT OF LAW THROUGH THE APPLICATION OF A LAW.— [W]e find that De Borja's petition does not present a justiciable controversy or the "ripening seeds" of one as to warrant a court's intervention. A justiciable controversy is a definite and concrete dispute touching on the legal relations of parties having adverse legal interests, which may be resolved by a court of law through the application of a law. It must be appropriate or ripe for judicial determination, admitting of specific relief through a decree that is conclusive in character. It must not be conjectural or merely anticipatory, which only seeks for an opinion that advises what the law would be on a hypothetical state of facts. In his five-page petition for declaratory relief, De Borja failed to provide factual allegations showing that his legal rights were the subject of an imminent or threatened violation that should be prevented by the declaratory relief sought. x x x De Borja's petition does not contain ultimate facts to support his cause of action. De Borja merely wants the court to give him an opinion on the proper interpretation of the definition of municipal waters. This is a prayer which we cannot grant. Our constitutional mandate to settle *only* actual controversies involving rights that are legally demandable and enforceable proscribes us from giving an advisory opinion.

3. ID.; ID.; ID.; ID.; ID.; RIPENESS FOR ADJUDICATION; TWO-FOLD ASPECT; FITNESS OF THE ISSUES FOR JUDICIAL DECISION AND THE HARDSHIP TO THE PARTIES ENTAILED BY WITHHOLDING COURT CONSIDERATION.— [C]losely associated with the requirement of actual or justiciable controversy is the requirement of ripeness for adjudication. x x x The requisite of ripeness has a two-fold aspect: fitness of the issues for judicial decision and the hardship to the parties entailed by withholding court consideration. The first aspect requires that the issue tendered is a purely legal one and that the regulation subject of the case is a "final agency action." The second aspect mandates that the effects of the regulation are felt in a concrete way by the challenging parties.

4. ID.; ID.; ID.; ID.; IN PETITIONS FOR DECLARATORY RELIEF, COURT ACTION IS DISCRETIONARY, SUCH THAT IT MAY REFUSE TO CONSTRUE THE STATUTE INVOLVED IF THE CONSTRUCTION IS NOT NECESSARY AND PROPER UNDER THE CIRCUMSTANCES OR IF THE CONSTRUCTION WOULD NOT TERMINATE THE CONTROVERSY.— [C]ourt action is discretionary in petitions for declaratory relief. We may refuse to construe the instrument, or in this case, the statute involved, if the construction is not necessary and proper under the circumstances and/or if the construction would not terminate the controversy. Here, the lack of a purely legal question, the absence of agency action, and the nonexistence of a threatened direct injury, make the construction of Section 4(58) of the 1998 Fisheries Code inappropriate and unripe for judicial resolution at this time. We cannot give relief merely because De Borja has a "real problem" and "a genuine need for legal advice."

5. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL POWER; *LOCUS STANDI*; MAY BE DISPENSED WITH BY THE TRANSCENDENTAL IMPORTANCE DOCTRINE BUT NOT THE REQUIREMENTS OF ACTUAL AND JUSTICIABLE CONTROVERSY AND RIPENESS FOR ADJUDICATION.— The transcendental importance doctrine dispenses only with the requirement of *locus standi.* It cannot and does not override the requirements of actual and justiciable controversy and ripeness for adjudication, which are conditions *sine qua non* for the exercise of judicial power.

APPEARANCES OF COUNSEL

Naval Caculitan Ragunjan Law Office for respondent R. De Borja.

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Sentro Ng Alternatibong Lingap Panligal for respondent PUMALU-MV and PKSK.

D E C I S I O N

JARDELEZA, *J.*:

Petitioners call upon us to disregard procedural rules on account of the alleged novelty and transcendental importance of the issue involved here. However, the transcendental importance doctrine cannot remedy the procedural defects that plague this petition. In the words of former Supreme Court Chief Justice Reynato Puno, *"no amount of exigency can make this Court exercise a power where it is not proper."*[1] A petition for declaratory relief, like any other court action, cannot prosper absent an actual controversy that is ripe for judicial determination.

In these consolidated petitions,[2] petitioners Rosendo De Borja (De Borja) and Tambuyog Development Center, Inc. (TDCI) seek to nullify the February 21, 2008 Decision[3] and November 3, 2008 Resolution[4] of the Court of Appeals (CA) in CA-G.R. CV No. 87391. The CA reversed the March 31, 2006 Decision[5] of the Regional Trial Court (RTC) of Malabon City — Branch 74 and dismissed, on the ground of prematurity, the petition for declaratory relief filed by De Borja and the petition-in-intervention filed by respondents Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas (PUMALU-MV), Pambansang Katipunan ng mga Samahan sa Kanayunan (PKSK), and TDCI.[6]

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[1] *Lozano v. Nograles,* G.R. No. 187883, June 16, 2009, 589 SCRA 356, 357.

[2] De Borja's Petition, *rollo* (G.R. No. 185320), pp. 3-27; TDCI's Petition, *rollo,* (G.R. No. 185348), pp. 7-32.

[3] *Rollo* (G.R. No. 185320), pp. 30-42; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Jose C. Reyes, Jr. and Arturo G. Tayag.

[4] *Id.* at 44-49.

[5] *Id.* at 172-184.

[6] *Id.* at 41.

On February 16, 2004, De Borja, a commercial fishing operator, filed a Petition for Declaratory Relief[7] (De Borja's petition) with the RTC of Malabon City. He asked the court to construe and declare his rights under Section 4(58) of Republic Act No. 8550 or The Philippine Fisheries Code of 1998 (1998 Fisheries Code). De Borja asked the court to determine the reckoning point of the 15-kilometer range of municipal waters, as provided under Section 4(58) of the 1998 Fisheries Code, in relation with Rule 4.1 (a) of its Implementing Rules and Regulations (IRR).[8] Section 4(58) of the 1998 Fisheries Code and Rule 4.1 (a) of the IRR respectively read:

> Sec. 4(58). *Municipal waters* – include not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas as defined under Republic Act No. 7586 (The NIPAS Law), public forest, timber lands, forest reserves or fishery reserves, but also **marine waters included between two (2) lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline.** Where two (2) municipalities are so situated on opposite shores that there is less than thirty (30) kilometers of marine waters between them, the third line shall be equally distant from opposite shore of the respective municipalities. (Emphasis and underscoring supplied.)
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> Rule 4.1 (a) *Coastline* – refers to the outline of the mainland shore touching the sea at mean lower low tide.

De Borja pleaded that the construction of the reckoning point of the 15-kilometer range affects his rights because he is now exposed to apprehensions and possible harassments that may be brought by conflicting interpretations of the 1998 Fisheries Code.[9] He further claimed that varying constructions of the law would spark conflict between fishermen and law enforcers,

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[7] *Id.* at 84-89.

[8] DA Administrative Order No. 3 (1998).

[9] *Rollo* (G.R. No. 185320), pp. 86-87.

and would ultimately affect food security and defeat the purpose of the 1998 Fisheries Code.[10]

De Borja, however, did not implead any party as respondent in his petition. The RTC, in an Order[11] dated March 9, 2004, directed the Office of the Solicitor General (OSG) to file a comment.

Meanwhile, the National Mapping and Resource Information Authority (NAMRIA), through Engr. Enrique A. Macaspac, Chief of Geodesy and Geophysics Division, filed a letter-request to intervene and comment on the petition.[12] In its Comment,[13] NAMRIA stated that Rule 4.1 (a) used the term "coastline," while Section 4(58) specified "general coastline." It thus concluded that the definition of "coastline" in Rule 4.1 (a) is valid only for municipalities without any island. NAMRIA explained that by definition, the "general coastline" of a municipality without any island is simply the coastline of the mainland (or mainland shore) of that municipality. On the other hand, a municipality with island/s has the coastline/s of its island/s; hence, its general coastline consists of not only the coastline of its mainland (or mainland shore) but also the coastline/s of its island/s.[14] Thus, where the municipality is archipelagic, the archipelagic principle shall apply in delineating municipal waters, *i.e.,* the 15-kilometer range of the municipal waters of an archipelagic municipality shall be reckoned not only from the coastline of the mainland but also from the coastline/s of the island/s of that municipality, such coastline/s of the island/s being part and parcel of the general coastline of that municipality.[15]

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[10] *Id.*

[11] Records, p. 81.

[12] *Id.* at 82.

[13] *Id.* at 88-105.

[14] *Id.* at 91.

[15] *Id.* at 94-95.

NAMRIA also gave their opinion as to whether the phrase "including offshore islands" in the phrase "a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline" refer to the "third line" (meaning, the third line includes or encloses the islands) or to the "general coastline" (meaning, the general coastline includes the coastline/s of the island/s). NAMRIA noted that "general coastline" precedes the word "including;" thus, "including offshore islands" must be referring to the "general coastline." NAMRIA also noted that the "third line" is qualified by two conditions: the third line is (1) parallel with the general coastline including offshore islands and (2) 15 kilometers from such coastline. NAMRIA concluded that to satisfy both conditions, the phrase "including offshore islands" must refer to the "general coastline," or in other words, must use the archipelagic principle.[16] NAMRIA stated that "including offshore islands" appeared only in the 1998 Fisheries Code. Earlier laws, which defined municipal waters, did not have it. NAMRIA then theorized that its presence in Section 4(58) of the 1998 Fisheries Code does not rule out the applicability of the archipelagic principle in delineating municipal waters. This interpretation is technically correct and consistent with the procedure in delimiting maritime boundaries under the United Nations Convention on the Law of the Sea.[17]

In its Comment,[18] the OSG narrated the events that led De Borja to file the petition. The OSG averred that the root cause of the petition was the adoption of the archipelagic principle in delineating and delimiting municipal waters of municipalities with offshore islands under Department of Environment and Natural Resources (DENR) Administrative Order No. 2001-17[19] (DAO 17).[20] Specifically, Section 5(B)(l)(c) of DAO 17 provides:

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[16] *Id.* at 91-92; 100.

[17] *Id.* at 93-94.

[18] *Id.* at 111-150.

[19] Guidelines for Delineating/Delimiting Municipal Waters.

[20] *Rollo* (G.R. No. 185320), p. 94.

Sec. 5. Systems and Procedures. x x x

B. Procedure for Delineation and Delimitation of Municipal Waters

1. Delineation of Municipal Waters

x x x x x x x x x

c) Use of Municipal archipelagic baselines

i. Where the territory of a municipality includes several islands, the outermost points of such islands shall be used as basepoints and connected by municipal archipelagic baselines, provided that the length of such baselines shall not exceed thirty (30) kilometers.

ii. The municipal archipelagic baselines shall determine the general coastline of the municipality for purposes of delineation and delimitation.

iii. Islands, isles, or islets located more than thirty (30) kilometers from the mainland of the municipality shall have their own separate coastlines.

iv. Rocks, reefs, cays, shoals, sandbars, and other features which are submerged during high tide shall not be used as basepoints for municipal archipelagic baselines. Neither shall they have their own coastlines.

v. The outer limits of the municipal waters of the municipality shall be enclosed by a line parallel to the municipal archipelagic baselines and fifteen (15) kilometers therefrom. (Emphasis supplied.)

The OSG detailed that on September 21, 2001, the Committee on Appropriations of the House of Representatives adopted Committee Resolution No. 2001-01 (House Committee Resolution) which recommended the revocation of DAO 17 for being tainted with legal infirmities.[21] The House Committee Resolution stated that the DENR has no jurisdiction to issue DAO 17 because Section 123[22] of the 1998 Fisheries Code clearly

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[21] *Id.* at 94-95.

[22] Sec. 123. *Charting of Navigational Lanes and Delineation of Municipal Waters.* – The Department shall authorize the National Mapping and Resource

referred to the Department of Agriculture (DA) as the department which shall determine the outer limits of municipal waters.[23] More importantly, the House Committee Resolution claimed that DAO 17 directly contravened the 1998 Fisheries Code and the Local Government Code (LGC). The House Committee Resolution explained that the phrase "including offshore islands" in Section 4(58) of the 1998 Fisheries Code means that offshore islands are deemed to be within 15 kilometers from the shorelines; therefore, negating the applicability of the archipelagic principle.[24] DAO 17, however, authorized otherwise. The implementation of DAO 17, therefore, would vastly reduce the fishing grounds already defined under the 1998 Fisheries Code and result in adverse effects to the fishing industry and the nation's food security.[25]

The House Committee Resolution was also sent to the DENR for appropriate action. The DENR, however, did not act on it. Thus, upon request of the House Committee on Appropriations, the Legal Affairs Bureau (LAB) of the House of Representatives issued a legal opinion on the validity of DAO 17. The LAB echoed the legal arguments contained in the House Committee Resolution. It asserted that the employment of the phrase "including offshore islands" was intentional to remove any doubt as to where the 15 kilometers should be reckoned from — that is, from the general coastline of the actual mainland and not from the archipelagic baseline.[26]

The matter was also referred to the Department of Justice (DOJ) for opinion. On November 27, 2002, the DOJ issued Opinion No. 100, which stated that the DA, not the DENR, has

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Information Authority (NAMRIA) for the designation and charting of navigational lanes in fishery areas and delineation of municipal waters. The Philippine Coast Guard shall exercise control and supervision over such designated navigational lanes.

[23] *Rollo* (G.R. No. 185320), p. 96.

[24] *Id.* at 96-98.

[25] *Id.* at 97.

[26] *Id.* at 101-102.

jurisdiction to authorize the delineation of municipal waters.[27] The DOJ then dispensed with the determination of whether DAO 17, which adopted the archipelagic principle in the delineation of municipal waters, was consistent with the provisions of the 1998 Fisheries Code.[28] As a result of the DOJ Opinion, the DENR Secretary revoked DAO 17 through DENR Administrative Order No. 2003-07.[29]

The OSG stressed that the DA was in the process of formulating guidelines for the delineation and delimitation of municipal waters. In fact, the DA conducted a Fisheries Summit on November 12 to 13, 2003 to consult small fisherfolk and the commercial fishing sector on the definition of municipal waters. However, these negotiations reached an impasse, which then triggered De Borja's filing of the petition before the RTC.[30]

The OSG explained the two conflicting views on the delineation of municipal waters, namely: (1) the archipelagic principle espoused by the Municipalities of the Philippines and small fisher folk; and (2) the mainland principle favored by the commercial fishing sector.[31] Under the mainland principle, the 15-kilometer range shall be reckoned from the municipality's coastline including offshore islands. The archipelagic principle, on the other hand, reckons the 15-kilometer range of municipal waters from the outermost offshore islands, and not the mainland. The outer limits of the municipal waters of the municipality shall be enclosed by a line parallel to the municipal archipelagic baseline and 15 kilometers therefrom.[32]

The OSG argued that the mainland principle should be adopted. It stated that the adoption of the archipelagic principle found

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[27] *Id.* at 105-106.

[28] *Id.* at 106.

[29] Revocation of Administrative Order 17, Series of 2001.

[30] *Rollo* (G.R. No. 185320), pp. 108-110.

[31] *Id.* at 108-109.

[32] *Id.* at 111-112.

in Article I of the 1987 Constitution, which is utilized in defining the Philippine territory *vis-a-vis* other states, is relevant only when the issue of intrusion into Philippine territorial water arises—that is, when foreign fishing vessels enter Philippine territorial waters.[33]

The OSG further explained that:

> The phrase "including offshore islands" used to modify general coastline in **Section 4(58) of R.A. No. 8550** shows the legislative intent that the mainland shall be the reckoning point of the fifteen kilometer range of municipal waters, and not the archipelagic municipal baseline. To adopt the archipelagic municipal baseline as the reckoning point would be to render the phrase "including offshore islands" redundant because offshore islands would be deemed already included in drawing the archipelagic baseline.
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> A correct grammatical construction of the questioned provision would indicate that the word "such" in the phrase "including offshore islands and fifteen kilometers from such coastline" refers to the general coastline, and not to an archipelagic municipal baseline. Coastline as defined under Rule 4.1 (a) of the Implementing Rules and Regulations of **R.A. No. 8550** "refers to the outline of the mainland shore touching the sea at mean lower tide." x x x[34]

The OSG also cited the House of Representatives Committee Deliberations on the 1998 Fisheries Code to show that the intent of the lawmakers is to reckon the 15-kilometer range of the municipal waters from the "shoreline."[35]

On August 16, 2004, PUMALU-MV, PKSK and TDCI (collectively, the intervenors) filed a Motion for Leave to File Intervention,[36] which the RTC granted. In their Petition-in-Intervention,[37] the intervenors claimed that, as small fisherfolk

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[33] *Id.* at 116-117.

[34] *Id.* at 120.

[35] *Id.* at 120-127.

[36] Records, pp. 186-190.

[37] *Rollo* (G.R. No. 185320), pp. 130-149.

engaged in community-based coastal resource management, they have substantial rights over the issue of delineation of municipal waters.[38] They maintained that Section 4(58) of the 1998 Fisheries Code should be construed in a manner that would give effect to the intent of delineating and delimiting municipal waters of a municipality with or without offshore islands. They posited that to apply the mainland principle to municipalities with offshore islands would result in the latter's dismemberment of their own islands or islets.[39] The intervenors also contended that the application of the mainland principle to municipalities with offshore islands would deny the local government units of their water and territorial jurisdiction, which would not be in keeping with the principle of autonomy under the LGC.[40]

As to municipalities with offshore islands, the intervenors averred that the archipelagic principle should be applied for consistency and congruence of the legal framework, considering that Article I of the 1987 Constitution adopts the archipelagic principle.[41] They argued that the application of the archipelagic principle in delimiting municipal waters is evident in the previous administrative issuances of the DA through the Bureau of Fisheries and Aquatic Resources (BFAR), namely: Fisheries Administrative Order No. (FAO) 164,[42] and FAO 156.[43] The intervenors noted that in defining the municipal waters under the regime of Presidential Decree No. 704,[44] FAO 164 and FAO 156 reckoned municipal waters of municipalities with islands

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[38] *Id.* at 131.

[39] *Id.* at 134-135.

[40] *Id.* at 137.

[41] *Id.* at 136-138.

[42] Rules and Regulations Governing the Operation of "Hulbot-Hulbot" in the Philippine Waters (1987).

[43] Guidelines and Procedure in the Effective Implementation of LOI No. 1328 (1986).

[44] Fisheries Decree of 1975.

and islets from the outer shorelines of such group of islands or islets.[45]

Finally, the intervenors revealed that after the revocation of DAO 17, the DA issued Department Order No. 01-04[46] (DAO 1) providing the guidelines for delineating municipal waters for municipalities and cities without offshore islands.[47] DAO 1, in effect, recognizes the need to distinguish between municipalities with and without offshore islands.

In its Decision dated March 31, 2006, the RTC agreed with the position of the OSG. It noted that the issuance of DAO 1 cited by the intervenors does not tacitly indicate that the archipelagic principle must be adopted as a means of delimitation or delineation of municipal waters in municipalities or cities with offshore islands. The RTC found an existing controversy regarding the definition of municipal waters for municipalities and cities with offshore islands, which the DA has yet to settle through an administrative directive. The RTC observed that the DA, through the OSG, opted to leave the matter of interpretation to the court.[48] Thus, the RTC disposed of the case in this wise:

> WHEREFORE, judgment is hereby rendered declaring that in interpreting the phrase "and a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline,[''] the "mainland principle" and not the "archipelagic principle" should be applied.[49]

The intervenors appealed to the CA.

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[45] *Rollo* (G.R. No. 185320), pp. 138-139.

[46] Guidelines for Delineating/Delimiting Municipal Waters for Municipalities and Cities Without Offshore Islands. Dated January 14, 2004, published on January 24, 2004 and took effect 15 days thereafter.

[47] *Rollo* (G.R. No. 185320), p. 131.

[48] *Id.* at 180-184.

[49] *Id.* at 184.

In its Decision dated February 21, 2008, the CA reversed and set aside the Decision of the RTC. According to the CA, De Borja's petition for declaratory relief and the request for intervention should have been dismissed due to prematurity.[50]

The CA ruled that De Borja's petition did not meet the two requisites of a petition for declaratory relief, namely: justiciable controversy and ripeness for judicial determination. It noted that there is no actual case or controversy regarding the definition of municipal waters for municipalities with offshore islands because the DA has yet to issue guidelines with respect to these.[51]

De Borja filed a Motion for Reconsideration with Motion for Clarification.[52] He argued that Section 1, Rule 63 of the Rules of Court allows any interested person to bring an action for declaratory relief for the construction of a statute, such as the 1998 Fisheries Code. Hence, it may be the subject of a petition for declaratory relief independent and regardless of the issuance of implementing guidelines, since implementing rules only flow from the statute.[53]

De Borja further asserted that the controversy is ripe for judicial determination considering the diverse interpretations of the parties on the scope of the phrase "and a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline."[54] He also claimed that the construction of the reckoning point of the 15-kilometer range of municipal waters under the law is, in any case, of national importance with transcendental implications because it affects the entire local fishing industry. He thus prayed for the CA to relax procedural rules and take cognizance of the petition.[55]

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[50] *Id.* at 41.

[51] *Id.* at 40.

[52] *Id.* at 295-309.

[53] *Id.* at 299.

[54] *Id.* at 302.

[55] *Id.* at 303.

TDCI also filed its Motion for Reconsideration[56] of the CA Decision. It argued that the petition should have been given due course because the issues in the case are not only novel, but are of transcendental importance. They involve the protection of small and marginal fisherfolk, and the delimitation of municipal waters throughout the country for fisheries or coastal resource management and law enforcement. TDCI prayed for the CA to declare the archipelagic doctrine as adopted in interpreting Section 4(58) of the 1998 Fisheries Code, with respect to municipalities with offshore islands.[57]

PKSK, on the other hand, filed its Comment[58] to De Borja's Motion for Reconsideration with Motion for Clarification, praying that it be dismissed for lack of merit. PKSK insisted that there is no actual case or controversy between the parties as to the provisions of the 1998 Fisheries Code, and that De Borja simply wants an interpretation by the court.[59] PKSK, however, argued that the dismissal of the petition meant that the archipelagic doctrine is the prevailing interpretation.[60]

In its Resolution[61] dated November 3, 2008, the CA denied De Borja's and TDCI's motions. The CA held:

> x x x At present, the DA has yet to issue guidelines for delineating/delimiting municipal waters for municipalities and cities with offshore islands. Since the DA still has to issue such guidelines to carry into effect the requirement imposed by Rule 123.2 of the IRR of RA No. 8550, whatever ramifications petitioner-appellee [De Borja] and intervenors-appellants fear may result from the enforcement of the questioned provision of RA No. 8550 remain to be merely hypothetical.
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> While this Court acknowledges the importance of the issue raised by petitioner-appellee and intervenors-appellants in SP Civil Action

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[56] *Id.* at 310-316.

[57] *Id.* at 312.

[58] CA *rollo,* pp. 292-299.

[59] *Id.* at 294.

[60] *Id.* at 295-296.

[61] *Rollo* (G.R. No. 185320), pp. 44-49.

No. 04-007-MN as well as in the present case it must be emphasized that this Court may not act upon a hypothetical issue that has not yet ripened into a justiciable controversy.[62] (Citations omitted.)

Thus, De Borja and TDCI filed their own petitions for review before us, which we consolidated in our Resolution[63] dated January 14, 2009. De Borja and TDCI both insist that the CA erred in dismissing the petition for declaratory relief on the ground of prematurity. They assert that only a judicial declaration will finally settle the different interpretations of Section 4(58) of the 1998 Fisheries Code. According to De Borja, a petition for declaratory relief is the proper remedy for the construction of the provision regardless of the issuance of implementing guidelines. As for TDCI, it maintains that all the requisites for a valid petition for declaratory relief are present.

De Borja and TDCI also both reiterate the issues' national significance and transcendental implications to the entire local fishing industry. They, however, differ in the principle they want the court to uphold in interpreting Section 4(58) of the 1998 Fisheries Code, respecting municipalities of cities with offshore islands. De Borja opines that the provision unqualifiedly adopts only the mainland principle in defining municipal waters.[64] TDCI, on the other hand, maintains that using the mainland principle in interpreting the provision would violate the constitutional rights of simple fisherfolk to subsistence fishing, and of municipalities and cities with offshore islands to meaningful autonomy in managing their resources.[65]

In its Comment[66] dated June 10, 2009, the OSG concurs with the CA that De Borja's petition before the RTC failed to allege a justiciable controversy. The OSG avers that the petition must fail because it was based on mere speculations, contingent events,

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[62] *Id.* at 48.

[63] *Id.* at 317-318.

[64] *Id.* at 18-20.

[65] *Rollo* (G.R. No. 185348), pp. 21-27.

[66] *Rollo* (G.R. No. 185320), pp. 357-404.

and hypothetical issues that have not yet ripened into an actual controversy.[67] Notwithstanding this position, the OSG still submits that the mainland principle, and not the archipelagic principle, should be adopted in defining municipal waters under the 1998 Fisheries Code.[68]

The sole issue presented is whether De Borja's petition for declaratory relief should prosper.

We deny the petition.

For a petition for declaratory relief[69] to prosper, it must be shown that (a) there is a justiciable controversy, (b) the controversy is between persons whose interests are adverse, (c) the party seeking the relief has a legal interest in the controversy, and (d) the issue invoked is ripe for judicial determination.[70] We agree with the CA when it dismissed De Borja's petition for being premature as it lacks the first and fourth requisites. We hasten to add that the petition, in fact, lacks all four requisites.

First, we find that De Borja's petition does not present a justiciable controversy or the "ripening seeds" of one as to warrant a court's intervention. A justiciable controversy is a definite and concrete dispute touching on the legal relations of parties having adverse legal interests, which may be resolved

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[67] *Id.* at 381-383.

[68] *Id.* at 383.

[69] RULES OF COURT, Rule 63, Sec. 1. *Who may file petition.* — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

[70] *Bayan Telecommunications, Inc. v. Republic,* G.R. No. 161140, January 31, 2007, 513 SCRA 562, 568, citing *Office of the Ombudsman v. Ibay,* G.R. No. 137538, September 3, 2001, 364 SCRA 281, 286.

by a court of law through the application of a law.[71] It must be appropriate or ripe for judicial determination, admitting of specific relief through a decree that is conclusive in character. It must not be conjectural or merely anticipatory, which only seeks for an opinion that advises what the law would be on a hypothetical state of facts.[72]

In his five-page petition for declaratory relief, De Borja failed to provide factual allegations showing that his legal rights were the subject of an imminent or threatened violation that should be prevented by the declaratory relief sought. He simply went on to conclude that the construction or interpretation of the reckoning point of the 15-kilometer range of municipal waters under the 1998 Fisheries Code would affect his rights as he is "now exposed to apprehensions and possible harassments **that may be** brought about by conflicting interpretations of the said statute x x x."[73] As to how these apprehensions and harassments shall come about, De Borja did not elaborate. Clearly, therefore, there is no actual or imminent threat to his rights which is ripe for judicial review. As we have explained in *Republic v. Roque*:[74]

A perusal of private respondents' petition for declaratory relief would show that they have failed to demonstrate how they are left to sustain or are in immediate danger to sustain some direct injury as a result of the enforcement of the assailed provisions of RA 9372. Not far removed from the factual milieu in the Southern Hemisphere cases, **private respondents only assert general interests as citizens, and taxpayers and infractions which the government**

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[71] *Bayan Telecommunications, Inc. v. Republic, supra* at 568, citing *Cutaran v. Department of Environment and Natural Resources,* G.R. No. 134958, January 31, 2001, 350 SCRA 697, 704-705.

[72] See *Republic of the Philippines v. Roque,* G.R. No. 204603, September 24, 2013, 706 SCRA 273, 284, citing *Velarde v. Social Justice Society,* G.R. No. 159357, April 28, 2004, 428 SCRA 283, 291; and *Guingona, Jr. v. Court of Appeals,* G.R. No. 125532, July 10, 1998, 292 SCRA 402, 413-414.

[73] *Rollo* (G.R. No. 185320), pp. 86-87; emphasis ours.

[74] G.R. No. 204603, September 24, 2013, 706 SCRA 273.

could prospectively commit if the enforcement of the said law would remain untrammelled. As their petition would disclose, private respondents' fear of prosecution was solely based on remarks of certain government officials which were addressed to the general public. They, however, failed to show how these remarks tended towards any prosecutorial or governmental action geared towards the implementation of RA 9372 against them. In other words, there was no particular, real or imminent threat to any of them. As held in Southern Hemisphere:

> Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are merely theorized, lie beyond judicial review for lack of ripeness.
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> **The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined. Such possibility is not peculiar to RA 9372 since the exercise of any power granted by law may be abused. Allegations of abuse must be anchored on real events before courts may step in to settle actual controversies involving rights which are legally demandable and enforceable.**[75] (Emphasis supplied; citations omitted.)

De Borja neither established his legal interest in the controversy nor demonstrated the adverse interests between him and others. He did not even implead any respondent and merely stated that he was engaged in fishing operations in various fishing grounds within the internal waters of the Philippines. He simply made a general statement that there are varying interpretations of the reckoning point of the 15-kilometer range of municipal waters under the 1998 Fisheries Code, without elaborating as to what these conflicting interpretations of the law were.

In the early case of *Delumen v. Republic,*[76] we concurred with the Solicitor General's contention that a justiciable

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[75] *Id.* at 284-285.

[76] 94 Phil. 287 (1954).

controversy is one involving an active antagonistic assertion of a legal right on one side and a denial thereof on the other concerning a real and not a merely theoretical question or issue.[77] We held that the petitioners in *Delumen* were not entitled to a declaratory relief because their petition did not mention any specific person having or claiming adverse interest in the matter. As such, they were invoking an action for declaratory judgment solely to determine a hypothetical, abstract, theoretical, or uncertain claim, which we cannot allow.[78]

We stress that neither the OSG's filing of its Comment nor the petition-in-intervention of PUMALU-MV, PKSK, and TDCI endowed De Borja's petition with an actual case or controversy. The Comment, for one, did not contest the allegations in De Borja's petition. Its main role was to supply De Borja's petition with the factual antecedents detailing how the alleged controversy reached the court. It also enlightened the RTC as to the two views, the mainland principle versus the archipelagic principle, on the definition of municipal waters. Even if the Comment did oppose the petition, there would still be no justiciable controversy for lack of allegation that any person has ever contested or threatened to contest De Borja's claim of fishing rights.[79]

The petition-in-intervention, on the other hand, also did not dispute or oppose any of the allegations in De Borja's petition. While it did espouse the application of the archipelagic principle in contrast to the mainland principle advocated by the OSG, it must be recalled that De Borja did not advocate for any of these principles at that time. He only adopted the OSG's position in his Memorandum before the RTC. Thus, the petition-in-intervention did not create an actual controversy in this case as the cause of action for declaratory relief must be made out by the allegations of the petition without the aid of any other pleading.[80]

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[77] *Id.* at 288-289.

[78] *Id.* at 289.

[79] See *Obiles v. Republic,* 92 Phil. 864 (1953).

[80] See *Delumen v. Republic, supra* at 289.

Simply put, De Borja's petition does not contain ultimate facts to support his cause of action. De Borja merely wants the court to give him an opinion on the proper interpretation of the definition of municipal waters. This is a prayer which we cannot grant. Our constitutional mandate to settle *only* actual controversies involving rights that are legally demandable and enforceable[81] proscribes us from giving an advisory opinion.

Second, closely associated with the requirement of actual or justiciable controversy is the requirement of ripeness for adjudication. In this regard, we cite our ruling in *Lozano v. Nograles,*[82] *viz.*:

> An aspect of the "case-or-controversy" requirement' is the requisite of "ripeness." x x x In our jurisdiction, the issue of ripeness is generally treated in terms of actual injury to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. An alternative road to review similarly taken would be to determine whether an action has already been accomplished or performed by a branch of government before the courts may step in.[83] (Emphasis and citations omitted.)

The requisite of ripeness has a two-fold aspect: fitness of the issues for judicial decision and the hardship to the parties entailed by withholding court consideration.[84] The first aspect requires that the issue tendered is a purely legal one and that the regulation subject of the case is a "final agency action." The second aspect mandates that the effects of the regulation are felt in a concrete way by the challenging parties.[85] Applying these tests, we find that De Borja's petition is not ripe for adjudication.

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[81] CONSTITUTION, Art. VIII, Sec. 1.

[82] G.R. No. 187883, June 16, 2009, 589 SCRA 356.

[83] *Id.* at 358-359.

[84] *Id.* at 359, citing *Abbott Laboratories v. Gardner,* 387 U.S. 136 (1967).

[85] *National Automatic Laundry and Cleaning Council v. Shultz,* 443 F.2d 689 (1971), citing *Abbott Laboratories v. Gardner, supra.*

The question calling for the interpretation of the definition of municipal waters for municipalities with offshore islands is **not** a purely legal question because the given set of facts from which our interpretation will be based are not yet complete. In other words, the question demands an agency action from the DA. An agency action is defined in Book VII, Chapter I, Section 2(15) of the Administrative Code of 1987[86] as referring to the whole or part of every agency rule, order, license, sanction, relief or its equivalent or denial thereof. As applied here, the action required from the DA involves further factual determination of a kind that necessitates the application of the Department's expertise and authority, both of which we do not have.

Under Section 123 of the 1998 Fisheries Code (now Section 157 of the 1998 Fisheries Code as amended by Republic Act No. 10654[87] [hereinafter, the Amended Fisheries Code]), the DA has the mandate to authorize the NAMRIA to designate and chart navigational lanes in fisheries areas and to delineate municipal waters. In the legitimate exercise of its power of subordinate legislation, the DA issued the IRR of the Amended Fisheries Code.[88] The IRR of the Amended Fisheries Code, particularly Sections 157.1 to 157.4, echoes the mandate of the DA and NAMRIA under Section 157 of the law. It provides the details and the process of delineation of municipal waters, to wit:

Sec. 157. *Charting of Navigational Lanes and Delineation of Municipal Waters.* – **The Department shall authorize the National Mapping and Resource Information Authority (NAMRIA) for the designation and charting of navigational lanes in fishery areas and delineation of municipal waters.** The Philippine Coast Guard shall exercise control and supervision over such designated navigational lanes.

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[86] Executive Order No. 292.

[87] An Act to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Amending Republic Act No. 8550, Otherwise Known as "The Philippine Fisheries Code of 1998" (2015).

[88] DA Administrative Order No. 10 (2015).

Rule 157.1. ***Delineation of Municipal Waters.*** - **Recognizing that all municipal waters have not yet been delineated, the DA-BFAR shall issue guidelines for the delineation of all municipal waters in the Philippines following the process stated in Rule 65.2.**

Rule 157.2. *Navigational Lanes.* – The DA-BFAR, shall facilitate the designation and charting of navigational lanes in fishery areas, by convening an Inter-Agency committee composed of NAMRIA, PN, PCG, MARINA, other concerned agencies and the NFARMC.

Rule 157.3. ***Mapping.*** – **The DA-BFAR, in coordination with the NAMRIA and with the participation of local government units concerned shall determine the outer limits of the municipal waters. Overlapping boundaries in municipal waters shall be governed by the Rules embodied in this law and the Local Government Code of 1991.**

Rule 157.4. *Navigational Charts.* – Charts of navigational lane and outer limits of municipal waters shall be produced, published and regularly updated by NAMRIA.

Rule 157.5. *Funding.* – The Department, through DBM, shall allocate sufficient funds for these purposes. (Emphasis supplied.)

Pertinently, Rule 65.2 provides:

Rule 65.2. *Formulation of Rules and Regulations.* – In formulating rules and regulations, the DA-BFAR shall observe these principles:

a. The regulation shall be based on scientific studies. **In the conduct of scientific studies, stakeholders in the affected region shall be informed of the conduct of the study, its duration and the expert/s who will conduct the same.** The stakeholders may nominate their own scientist/s to participate in the study or will be given the chance to provide comments on the scientist who will conduct the study;

b. The consultation shall be conducted in all affected regions as may be practicable, taking into consideration the safety and accessibility of the venue to the stakeholders;

c. Stakeholders shall be given at least fifteen (15) days prior notice of the date and venue of the consultation including the subject matter of the proposed regulation. The notice shall be published in a newspaper of general circulation in the region, where feasible; and,

d. The proposed regulation shall be made publicly available at the BFAR website and BFAR Regional Offices at least seven (7) days prior to the consultation. (Emphasis supplied.)

The DA, however, has not yet performed any of the above acts. The record shows that no rule, regulation, or guidelines have been issued by the DA to date, in coordination with BFAR, as regards municipalities with offshore islands. There are serious gaps in the implementation of the law which the DA and the concerned agencies would still need to fill in. As it stands, therefore, there is no agency action to speak of, much less a "final agency action" required under the ripeness doctrine.

Equally significant, we find that if we were to grant the petition for declaratory relief, it would mean an intrusion into the domain of the executive, preempting the actions of the DA and other concerned government agencies and stakeholders. As clearly set out in the provisions of the IRR, the primary duty of determining the reckoning point of the 15-kilometer range of municipal waters of municipalities with offshore islands falls with the DA, NAMRIA, and the BFAR. They shall do so through public consultation or with the participation of stakeholders, such as the concerned municipalities, fishing operators, and fisherfolk.

Nonetheless, De Borja insists that a statute may be the subject of a petition for declaratory relief regardless of the issuance of an implementing guideline. He pleads that the "persisting and actual confusion brought about by the different interpretations of the interested groups in the local fishing industry is ripe for judicial action."[89] We disagree. In *Garcia v. Executive*

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[89] *Rollo* (G.R. No. 185320), p. 13.

Secretary,[90] we ruled that a petition assailing the constitutionality of Republic Act No. 7042 or the Foreign Investments Act of 1991 is not ripe for adjudication, there being "no actual case or controversy, particularly because of the absence of the implementing rules that are supposed to carry the Act into effect."[91]

In *Bayan Telecommunications, Inc. v. Republic,*[92] we affirmed the ruling of the CA in dismissing a petition for declaratory relief after we found that Bayantel's fear of sanction under Section 21 of Republic Act No. 7925[93] was merely hypothetical, as there are yet no implementing rules or guidelines to carry into effect the requirement imposed by the said provision.[94]

Likewise, in *Lozano,*[95] we noted that judicial intervention[96] was premature because the House of Representatives has yet to adopt rules of procedure in relation to Resolution No. 1109.[97]

Corollarily, since no implementing rule or agency action is involved in this case, no real hardship may be felt by De Borja if we were to withhold judicial consideration. As earlier discussed, the petition did not state any specific right to which De Borja was entitled, and which was threatened to be violated, prejudiced or denied by the DA. We emphasize that court action is discretionary in petitions for declaratory relief.[98] We may

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[90] G.R. No. 100883, December 2, 1991, 204 SCRA 516.

[91] *Id.* at 522.

[92] G.R. No. 161140, January 31, 2007, 513 SCRA 562.

[93] Public Telecommunications Policy Act of the Philippines (1995).

[94] *Bayan Telecommunications, Inc. v. Republic, supra* at 568.

[95] *Supra* note 82.

[96] Petitioners, in *Lozano,* called for the nullification of House Resolution No. 1109.

[97] A Resolution Calling Upon the Members of Congress to Convene for the Purpose of Considering Proposals to Amend or Revise the Constitution, Upon a Three-fourths Vote of All the Members of Congress, Fourteenth Congress.

[98] *Chan v. Galang,* G.R No. L-21732, October 17, 1966, 18 SCRA 345, 351.

refuse to construe the instrument, or in this case, the statute involved, if the construction is not necessary and proper under the circumstances and/or if the construction would not terminate the controversy.[99] Here, the lack of a purely legal question, the absence of agency action, and the nonexistence of a threatened direct injury, make the construction of Section 4(58) of the 1998 Fisheries Code inappropriate and unripe for judicial resolution at this time. We cannot give relief merely because De Borja has a "real problem" and "a genuine need for legal advice."[100] As aptly put in *Abbott Laboratories v. Gardner:*[101]

> x x x Without undertaking to survey the intricacies of the ripeness doctrine, it is fair to say that its basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties. (Citation omitted.)

Considering the foregoing, the DA's decision, through the OSG, to submit the interpretation of municipal waters to the court's wisdom and discretion was improper. The executive cannot simply pass the buck to the judiciary. As we have explained in *Tan v. Macapagal:*[102]

> x x x The doctrine of separation of powers calls for the other departments being left alone to discharge their duties as they see fit. The judiciary as Justice Laurel emphatically asserted "will neither direct nor restrain executive [or legislative] action x x x." **The legislative and executive branches are not bound to seek its advice as to what to do or not to do. Judicial inquiry has to be postponed in the meanwhile. It is a prerequisite that something had by then**

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[99] See RULES OF COURT, Rule 63, Sec. 5.

[100] *National Automatic Laundry and Cleaning Council v. Shultz,* 443 F.2d 689 (1971), citing *F. W. Maurer & Sons Co. v. Andrews,* 30 F. Supp. 637, 638 (E.D. Pa. 1939).

[101] 387 U.S. 136 (1967).

[102] G.R. No. L-34161, February 29, 1972, 43 SCRA 677.

been accomplished or performed by either branch before a court may come into the picture, At such a time, it may pass on the validity of what was done but only "when xxx properly challenged in an appropriate legal proceeding."[103] (Emphasis supplied; citations omitted.)

Finally, in their attempt to salvage the case, both De Borja and intervenor TDCI invoked transcendental importance. However, their contention is misplaced. The transcendental importance doctrine dispenses only with the requirement of *locus standi.*[104] It cannot and does not override the requirements of actual and justiciable controversy and ripeness for adjudication, which are conditions *sine qua non* for the exercise of judicial power.

WHEREFORE, the consolidated petitions are **DENIED.** The February 21, 2008 Decision and November 3, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 87391 are hereby **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Reyes,* and *Tijam, JJ.,* concur.

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[103] *Id.* at 681.

[104] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,* G.R. No. 178552, October 5, 2010, 632 SCRA 146, 168, citing *Chavez v. Presidential Commission on Good Government,* G.R. No. 130716, December 9, 1998, 299 SCRA 744.

THIRD DIVISION

[G.R. No. 189881. April 19, 2017]

BACLARAN MARKETING CORPORATION, *petitioner, vs.* **FERNANDO C. NIEVA and MAMERTO SIBULO, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTION FOR ANNULMENT OF JUDGMENTS OR FINAL ORDERS; REQUIREMENTS; ANNULMENT OF FINAL JUDGMENT IS A RECOURSE EQUITABLE IN CHARACTER, ALLOWED ONLY IN EXCEPTIONAL CASES WHERE THERE IS NO AVAILABLE OR OTHER ADEQUATE REMEDY.— Rule 47 of the Rules of Court governs actions for the annulment of final judgments, orders, or resolutions of regional trial courts in civil actions. It is a recourse equitable in character, allowed only in exceptional cases where there is no available or other adequate remedy. Its objective is to set aside a final and executory judgment, which is not void upon its face, but is entirely regular in form, and whose alleged defect is not apparent upon its face or from the recitals contained in the judgment. Since it disregards the time-honored rule of immutability and unalterability of final judgments, the Rules of Court impose stringent requirements before a litigant may avail of it. In *Pinausukan Seafood House v. Far East Bank & Trust Company,* we held that "[g]iven the extraordinary nature and the objective of the remedy of annulment of judgment or final order," a petitioner must comply with the statutory requirements as set forth under Rule 47.

2. ID.; ID.; ID.; REMEDY APPLIES ONLY TO FINAL JUDGMENTS OR ORDERS; FINAL JUDGMENT OR ORDER, DEFINED.— Rule 47, Section 1 limits the applicability of the remedy of annulment of judgment to *final* judgments, orders or resolutions. A final judgment or order is one that finally disposes of a case, leaving nothing more for the court to do in respect thereto. This may be an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations

of the parties are and which party is in the right, or a judgment or order that dismisses an action on the ground of *res judicata* or prescription.

3. ID.; ID.; ID.; GROUNDS THEREFOR.— Rule 47, Section 2 provides extrinsic fraud and lack of jurisdiction as the exclusive grounds for the remedy of annulment of judgment. Case law, however, recognizes a third ground—denial of due process of law. *Arcelona v. Court of Appeals* teaches that a decision which is patently void may be set aside on grounds of want of jurisdiction or "non-compliance with due process of law."

4. ID.; ID.; ID.; ID.; EXTRINSIC FRAUD, DEFINED; A LAWYER'S MISTAKE OR GROSS NEGLIGENCE DOES NOT AMOUNT TO EXTRINSIC FRAUD THAT WOULD GRANT A PETITION FOR ANNULMENT OF JUDGMENT.— Extrinsic fraud refers to a fraud committed to the unsuccessful party by his opponent preventing him from fully exhibiting his case by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or when an attorney fraudulently or without authority connives at his defeat. x x x Fraud is not extrinsic if the alleged fraudulent act was committed by petitioner's own counsel. The fraud must emanate from the act of the adverse party and must be of such nature as to deprive petitioner of its day in court. Thus, in many cases, we have held that a lawyer's mistake or gross negligence does not amount to extrinsic fraud that would grant a petition for annulment of judgment.

5. LEGAL ETHICS; ATTORNEYS; THE NEGLIGENCE OF THE COUNSEL BINDS THE CLIENT, EXCEPT IN CASES WHERE THE GROSS NEGLIGENCE OF THE LAWYER DEPRIVED HIS CLIENT OF DUE PROCESS.— It is well-settled that the negligence of the counsel binds the client, except in cases where the gross negligence of the lawyer deprived his client of due process of law. However, mere allegation of gross negligence does not suffice. In the recent case of *Ong Lay Hin v. Court of Appeals,* we held that for the exception to apply, the client must prove by clear and convincing evidence that he was maliciously deprived of information that he could not have acted to protect his interests. The error of his counsel must have been both palpable and maliciously exercised that it could

viably be the basis for a disciplinary action. Pertinently, malice is never presumed but must be proved as a fact. The record is bereft of showing that BMC alleged and proved that Atty. Rizon was motivated by malice in failing to inform it of Sibulo's appeal. Moreover, the gross negligence of the counsel must not be accompanied by the client's own negligence.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioner.
Edgardo C. Galvez for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] of the August 26, 2009[2] and October 9, 2009[3] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 108033. The CA denied due course and dismissed Baclaran Marketing Corporation's (BMC) Petition for Annulment of Judgment on the ground that it is not a remedy available to BMC.

Petitioner BMC is a domestic corporation engaged in the business of distribution, marketing and delivery of cement.[4] It is one of the defendants in Civil Case No. 1218-A, entitled "*Mamerto Sibulo, Jr. v. Ricardo Mendoza and Baclaran Marketing, Inc.*" pending with the Regional Trial Court of Antipolo, Branch 74 (Antipolo Court).[5] The case is one for damages arising from a vehicular collision in Taytay, Rizal

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[1] *Rollo*, pp. 3-37; With Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.

[2] *Id.* at 42-50. Penned by Associate Justice Portia Alino-Hormachuelos with Associate Justices Fernanda Lampas-Peralta and Ramon R. Garcia, concurring.

[3] *Id.* at 52-53.

[4] *Id.* at 5.

[5] *Id.*

between a 10-wheeler truck owned by BMC and driven by its employee Ricardo Mendoza (Mendoza), and a car owned and driven by Mamerto Sibulo, Jr. (Sibulo). The Antipolo Court, in its Decision[6] dated November 21, 1990 (1990 Decision), ruled in favor of BMC and Mendoza and dismissed Sibulo's complaint.[7] It found that the damages suffered by Sibulo were the result of his own reckless and imprudent driving.[8]

On appeal, the CA, in its Decision[9] dated May 9, 2005 reversed the Antipolo Court and held that Mendoza's negligence caused the collision. It awarded Sibulo damages in the total amount of ₱765,159.55.[10] In the absence of a motion for reconsideration, the Decision became final and executory on June 12, 2005.[11] The Antipolo Court subsequently issued a Writ of Execution[12] on January 16, 2006. Then, in an Order[13] dated February 23, 2006, it directed the Deputy Sheriff, upon motion of Sibulo, to implement the Writ of Execution against the real properties owned by BMC, as it appears that BMC has no personal properties. The sheriff of the Antipolo Court levied upon BMC's real property in Parañaque City covered by Transfer Certificate of Title (TCT) No. 34587 (property). He sold the property and its improvements through public auction on April 17, 2006. Respondent Fernando C. Nieva (Nieva) emerged as the highest bidder paying the total price of ₱800,000.00.[14]

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[6] *Rollo*, pp. 54-56, penned by Judge Daniel P. Alfonso.

[7] *Id.* at 56.

[8] *Id.*

[9] *Rollo*, pp. 58-73. Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Godardo A. Jacinto and Bienvenido L. Reyes, concurring.

[10] *Id.* at 72.

[11] *Id.* at 192.

[12] *Id.* at 74-75.

[13] *Id.* at 76-77.

[14] *Id.* at 8.

For BMC's failure to redeem the property within one year from the sale, Nieva consolidated ownership over it. He filed a Petition for Cancellation of Transfer Certificate Title No. 34587 and Issuance of New [Title] in the Regional Trial Court of Parañaque City, Branch 257 (Parañaque Court) pursuant to Section 107 of Presidential Decree No. 1529.[15] The case was docketed as LRC Case No. 07-0119.[16] The Parañaque Court granted the petition in its Decision[17] dated March 26, 2008 and ordered BMC to surrender to Nieva, within 15 days from receipt of the Decision, its owner's duplicate certificate of title over the property. Failing such, the Parañaque Court ordered the Register of Deeds to annul TCT No. 34587 and issue a new title in Nieva's name. The Decision of the Parañaque Court became final on May 8, 2008.[18]

Consequently, Nieva filed a Petition for Issuance of a Writ of Possession over the property in the Parañaque Court. The case was docketed as LRC Case No. 08-0077. The Parañaque Court granted the petition in its Decision[19] dated January 26, 2009 and issued a Writ of Possession and Notice to Vacate against BMC dated March 12, 2009 and March 22, 2009, respectively.[20]

In view of the Writ of Possession and Notice to Vacate issued against it, BMC filed a Petition for Annulment of Judgment[21] before the CA. BMC prayed for the annulment of the following orders and decisions:

(a) Writ of Execution dated January 16, 2006 issued by the Antipolo Court in Civil Case No. 1218-A;

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[15] Property Registration Decree.

[16] *Rollo*, p. 19.

[17] *Id*. at 89-91.

[18] *Id*. at 92-93.

[19] *Id*. at 94-96.

[20] *Id*. at 11.

[21] *Id*. at 131-158; With Urgent Motion for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.

(b) Order dated February 23, 2006 of the Antipolo Court in Civil Case No. 1218-A ordering the implementation of the writ of execution over the real properties of BMC;
(c) Auction Sale dated April 17, 2006;
(d) Decision dated March 26, 2008 of the Parañaque Court in LRC Case No. 07-0119 canceling TCT No. 34587; and
(e) Decision dated January 26, 2009 of the Parañaque Court in LRC Case No. 08-0077, ordering the issuance of a Writ of Possession.[22]

BMC alleged that its counsel, Atty. Isagani B. Rizon (Atty. Rizon), committed acts of gross and inexcusable negligence constituting "extrinsic fraud," which deprived it of due process and an opportunity to present its side.[23] It discovered the fraud only in December 2008 when its representatives tried to pay the real estate tax on the property, only to learn that the title to it had already been transferred to Nieva.[24] BMC averred that it did not know that Sibulo appealed the 1990 Decision of the Antipolo Court to the CA. It claimed that Atty. Rizon assured BMC that the 1990 Decision ended the controversy.[25] Had BMC known of the appeal, it could have opposed the proceedings or engaged the services of new counsel.

BMC claimed that it immediately called Atty. Rizon in his office upon discovering that the property was levied upon and sold at public auction. However, BMC was informed that Atty. Rizon died on January 30, 2009. It also learned that Atty. Rizon ran for public office and won as Mayor of Baroy, Lanao Del Norte in the 1995, 2001, 2004 and 2007 elections.[26] BMC alleged that based on court records, notices relative to the case against BMC were sent to Atty. Rizon but, for some reason unknown

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[22] *Id*. at 133.

[23] *Id*. at 134.

[24] *Id.*

[25] *Rollo*, p. 137.

[26] *Id.*

to BMC, Atty. Rizon never informed it of the court documents/processes.[27]

BMC emphasized that the Antipolo Court ruled in its favor in Civil Case No. 1218-A and that it was only when BMC failed to participate in the appeal that an adverse decision was rendered against it.[28] It maintains that if the orders of the Antipolo and Parañaque Courts were allowed to stand, BMC will be deprived of its substantial property rights over the property: when the property was sold to Nieva at the public auction for a bid price of ₱800,000.00, its market value[29] was already ₱19,890,000.00.[30]

The CA, in its Resolution dated August 26, 2009, denied BMC's petition. It ruled that the remedy of annulment of judgment is not available to BMC because:

(a) Extrinsic fraud refers to a fraud perpetrated by the prevailing party, not by the unsuccessful party's own counsel.[31]
(b) BMC is bound by the negligence of Atty. Rizon because it was negligent for not checking on the status of the case. It did not also inform the Antipolo Court of its change of address. Thus, BMC cannot claim that it was denied due process.[32]
(c) A writ of execution or auction sale are not in the nature of a final judgment, order, or resolution, hence, they cannot be the subject of an action to annul judgment.[33]

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[27] *Id.*

[28] *Rollo*, p. 139.

[29] Pegged at the time Nieva paid the capital gains tax.

[30] *Rollo*, p. 135.

[31] *Id.* at 46.

[32] *Id.* at 48.

[33] *Id.* at 49-50.

BMC moved for reconsideration; this, however, was denied. Hence, this petition,[34] which raises the sole issue of whether the CA erred in dismissing BMC's petition for annulment of judgment.

We deny the petition.

I

Rule 47 of the Rules of Court governs actions for the annulment of final judgments, orders, or resolutions of regional trial courts in civil actions. It is a recourse equitable in character, allowed only in exceptional cases where there is no available or other adequate remedy.[35] Its objective is to set aside a final and executory judgment, which is not void upon its face, but is entirely regular in form, and whose alleged defect is not apparent upon its face or from the recitals contained in the judgment.[36] Since it disregards the time-honored rule of immutability and unalterability of final judgments, the Rules of Court impose stringent requirements before a litigant may avail of it. In *Pinausukan Seafood House v. Far East Bank & Trust Company*,[37] we held that "[g]iven the extraordinary nature and the objective of the remedy of annulment of judgment or final order,"[38] a petitioner must comply with the statutory requirements as set forth under Rule 47. These are:

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[34] *Id*. at 32. BMC also prays for the issuance of a temporary restraining order and/or writ of preliminary injunction to enjoin the implementation of the writ of possession issued by the Parañaque Court. BMC maintains that if not enjoined by this Court, BMC will be ejected from the property and Nieva will undoubtedly transfer it to a third person.

[35] *Antonino v. Register of Deeds of Makati City*, G.R. No. 185663, June 20, 2012, 674 SCRA 227, 236 citing *Ramos v. Judge Combong, Jr.*, G.R. No. 144273, October 20, 2005, 473 SCRA 499.

[36] *Arcelona v. Court of Appeals*, G.R. No. 102900, October 2, 1997, 280 SCRA 20, 32-33, citing *Macabingkil v. People's Homesite and Housing Corporation*, G.R. No. L-29080, August 17, 1976, 72 SCRA 326.

[37] G.R. No. 159926, January 20, 2014, 714 SCRA 226.

[38] *Id*. at 241.

(1) The remedy is available only when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies through no fault of the petitioner;
(2) The grounds for the action of annulment of judgment are limited to either extrinsic fraud or lack of jurisdiction;
(3) The action must be filed within four years from the discovery of the extrinsic fraud; and if based on lack of jurisdiction, must be brought before it is barred by laches or estoppel; and
(4) The petition must be verified, and should allege with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.[39]

BMC's petition for annulment of judgment fails to meet the first and second requisites.

II

Rule 47, Section 1 limits the applicability of the remedy of annulment of judgment to *final* judgments, orders or resolutions.[40] A final judgment or order is one that finally disposes of a case, leaving nothing more for the court to do in respect thereto. This may be an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right, or a judgment or order that dismisses an action on the ground of *res judicata* or prescription.[41] In contrast,

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[39] *Id.* at 242-247.

[40] Sec. 1. *Coverage*. - This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

[41] *Ybiernas v. Tanco-Gabaldon*, G.R. No. 178925, June 1, 2011, 650 SCRA 154, 166, citing *Intramuros Tennis Club, Inc. v. Philippine Tourism Authority*, G.R. No. 135630, September 26, 2000, 341 SCRA 90.

an interlocutory order does not dispose of a case completely but leaves something to be done upon its merits.[42]

We find that the CA correctly denied BMC's petition.

In *Guiang v. Co*,[43] we declared that an auction sale and a writ of execution are not final orders. Thus, they cannot be nullified through an action for annulment of judgment, to wit:

> It bears stressing that Rule 47 of the Rules of Civil Procedure applies only to a petition to annul a judgment or final order and resolution in civil actions, on the ground of extrinsic fraud or lack of jurisdiction or due process. A final order or resolution is one which is issued by a court which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court. **The rule does not apply to an action to annul the levy and sale at public auction of petitioner's properties or the certificate of sale executed by the deputy sheriff over said properties. Neither does it apply to an action to nullify a writ of execution because a writ of execution is not a final order or resolution, but is issued to carry out the mandate of the court in the enforcement of a final order or of a judgment. It is a judicial process to enforce a final order or judgment against the losing party.**[44] (Citations omitted, emphasis supplied.)

Corollarily, an order *implementing* a writ of execution issued over certain real properties is also not a final order as it merely enforces a judicial process over an identified object. It does not involve an adjudication on the merits or determination of the rights of the parties.

Closely related to a writ of execution is a writ of possession. In *LZK Holdings and Development Corp. v. Planters*

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[42] *Fenequito v. Vergara, Jr.*, G.R. No. 172829, July 18, 2012, 677 SCRA 113, 119.

[43] G.R. No. 146996, July 30, 2004, 435 SCRA 556.

[44] *Id.* at 562. See also *Land Bank of the Philippines v. Planta*, G.R. No. 152324, April 29, 2005, 457 SCRA 664.

Development Bank,[45] we explained that a writ of possession is a writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give its possession to the person entitled under the judgment.[46] Thus, similar to a writ of execution, a writ of possession is not a final order which may be annulled under Rule 47. It is merely a judicial process to enforce a final order against the losing party. For this reason the Decision of the Antipolo Court ordering the issuance of writ of possession is also not amenable to an action for annulment of judgment.

In fine, only the Decision of the Parañaque Court ordering the cancellation of BMC's title over the property qualifies as a final judgment. It is a judgment on the merits declaring who between Nieva and BMC has the right over the title to the property. Therefore, it may be the subject of an action for annulment of judgment. Be that as it may, BMC failed to prove that any of the grounds for annulment are present in this case.

III

Rule 47, Section 2 provides extrinsic fraud and lack of jurisdiction as the exclusive grounds for the remedy of annulment of judgment.[47] Case law, however, recognizes a third ground — denial of due process of law. *Arcelona v. Court of Appeals*[48] teaches that a decision which is patently void may be set aside on grounds of want of jurisdiction or "non-compliance with due process of law."[49]

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[45] G.R. No. 167998, April 27, 2007, 522 SCRA 731.

[46] *Id*. at 738, citing *Ong v. Court of Appeals*, G.R. No. 121494, June 8, 2000, 333 SCRA 189, 195.

[47] Sec. 2. *Grounds for Annulment*. – The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

[48] *Supra* note 36.

[49] See also *Benatiro v. Heirs of Evaristo Cuyos*, G.R. No. 161220, July 30, 2008, 560 SCRA 478, 494-495, citing *Intestate Estate of the Late Nimfa Sian v. Philippine National Bank*, G.R. No. 168882, January 31, 2007, 513 SCRA 662.

Here, BMC invokes extrinsic fraud and lack of due process as grounds for its petition for annulment of judgment. It claims that Atty. Rizon's gross negligence in handling the case constitutes extrinsic fraud and deprived it of due process of law.

We are not persuaded. Extrinsic fraud refers to a fraud committed to the unsuccessful party by his opponent preventing him from fully exhibiting his case by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or when an attorney fraudulently or without authority connives at his defeat.[50]

In *Pinausukan*,[51] we held that a lawyer's neglect in keeping track of the case and his failure to apprise his client of the developments of the case do not constitute extrinsic fraud. Fraud is not extrinsic if the alleged fraudulent act was committed by petitioner's own counsel. The fraud must emanate from the act of the adverse party and must be of such nature as to deprive petitioner of its day in court.[52] Thus, in many cases, we have held that a lawyer's mistake or gross negligence does not amount to extrinsic fraud that would grant a petition for annulment of judgment.[53]

In this case, the CA correctly found that BMC neither alleged nor proved that the gross negligence of its former counsel was done in connivance with Nieva or Sibulo.[54] Therefore, it is not the extrinsic fraud contemplated under Rule 47, Section 2.

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[50] *Cosmic Lumber Corporation v. Court of Appeals*, G.R. No. 114311, November 29, 1996, 265 SCRA 168, 180.

[51] *Supra* note 37.

[52] *Id*. at 232.

[53] *Lasala v. National Food Authority*, G.R. No. 171582, August 19, 2015, 767 SCRA 430, 448.

[54] *Rollo*, p. 46.

IV

BMC maintains that it was denied due process of law because it was not able to participate in the proceedings subsequent to the 1990 Decision of the Antipolo Court. It alleges that Atty. Rizon did not inform it of Sibulo's appeal and of the orders and processes issued by the courts.[55] BMC pleads that Atty. Rizon's gross negligence in handling the case is tantamount to abandonment of the same.[56] Thus, it should not be bound by the negligence of its counsel.

Nieva and Sibulo, on the other hand, assert that BMC was not deprived of due process. They aver that the records of the CA show that BMC was furnished with a copy of the decision of the CA and a copy of the entry of judgment.[57]

BMC's contentions have no leg to stand on. It is well-settled that the negligence of the counsel binds the client, except in cases where the gross negligence of the lawyer deprived his client of due process of law. However, mere allegation of gross negligence does not suffice. In the recent case of *Ong Lay Hin v. Court of Appeals*,[58] we held that for the exception to apply, the client must prove by clear and convincing evidence that he was maliciously deprived of information that he could not have acted to protect his interests. The error of his counsel must have been both palpable and maliciously exercised that it could viably be the basis for a disciplinary action.[59] Pertinently, malice is never presumed but must be proved as a fact. The record is bereft of showing that BMC alleged and proved that Atty. Rizon was motivated by malice in failing to inform it of Sibulo's appeal.

Moreover, the gross negligence of the counsel must not be accompanied by the client's own negligence. In *Bejarasco, Jr.*

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[55] *Id*. at 15.

[56] *Id*. at 16.

[57] *Id*. at 197.

[58] G.R. No. 191972, January 26, 2015, 748 SCRA 198.

[59] *Id*. at 208.

v. People,[60] we ruled that for his failure to keep himself up-to-date on the status of his case, the client should suffer whatever adverse judgment is rendered against him. A litigant bears the responsibility of monitoring the developments of his case for no prudent party leaves the fate of his case entirely in the hands of his lawyer.[61]

In this light, BMC cannot pass all the blame to Atty. Rizon. It admitted in its petition before us that after obtaining a favorable decision from the Antipolo Court, it did not bother to check the status of the case.[62] While it might be true that Atty. Rizon assured it that the case has already ended with the 1990 Decision, the prudent thing would have been for BMC to ask for evidence or proof that the decision was already final. This, BMC failed to do.

Since Sibulo's claim for damages involves a considerable amount of money, BMC is expected to protect its own interest and not merely to rely on its counsel. It is the duty of BMC to be in touch with its counsel regarding the progress of the case. It cannot just sit back, relax, and wait for the outcome of the case.[63] Since the alleged negligent act of its counsel was accompanied by BMC's own negligence, the latter shall be bound by the former's negligence.

We commiserate with the plight of BMC, assuming that it was indeed unaware of the proceedings subsequent to the 1990 Decision. Nevertheless, we cannot simply disregard the statutory requirements of an action for annulment of judgment, lest we open the gates for possible abuse of litigants who seek to delay the enforcement of final and executory judgments of the courts.

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[60] G.R. No. 159781, February 2, 2011, 641 SCRA 328.

[61] *Id.* at 331, citing *Delos Santos v. Elizalde*, G.R. No. 141810, February 2, 2007, 514 SCRA 14, 30-31, further citing *Bernardo v. Court of Appeals (Special Sixth Division)*, G.R. No. 106153, July 14, 1997, 275 SCRA 413.

[62] *Rollo*, p. 17.

[63] *Manaya v. Alabang Country Club, Incorporated*, G.R. No. 168988, June 19, 2007, 525 SCRA 140, 148, citing *GCP-Manny Transport Services, Inc. v. Principe*, G.R. No. 141484, November 11, 2005, 474 SCRA 555, 563-564.

WHEREFORE, the petition is **DENIED** for lack of merit. The August 26, 2009 and October 9, 2009 Resolutions of the Court of Appeals in CA-G.R. SP No. 108033 are hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen,*[*] and *Tijam, JJ.,* concur.

SECOND DIVISION

[G.R. No. 190389. April 19, 2017]

MANGGAGAWA NG KOMUNIKASYON SA PILIPINAS, *petitioner, vs.* **PHILIPPINE LONG DISTANCE TELEPHONE COMPANY INCORPORATED,** *respondent.*

[G.R. No. 190390. April 19, 2017]

MANGGAGAWA NG KOMUNIKASYON SA PILIPINAS, *petitioner, vs.* **PHILIPPINE LONG DISTANCE TELEPHONE COMPANY INCORPORATED,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; IN A LABOR CASE, A RULE 45 PETITION VERIFIES IF THE COURT OF APPEALS FAILED TO DETERMINE WHETHER THE NATIONAL LABOR RELATIONS

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[*] Designated as Additional Member in lieu of Associate Justice Bienvenido L. Reyes per Raffle dated March 27, 2017.

COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION.— A petition for review on *certiorari* under Rule 45 is a mode of appeal where the issue is limited only to questions of law. In labor cases, a Rule 45 petition "can prosper only if the Court of Appeals . . . fails to correctly determine whether the National Labor Relations Commission committed grave abuse of discretion." A court or tribunal is said to have acted with grave abuse of discretion when it capriciously acts or whimsically exercises judgment to be "equivalent to lack of jurisdiction." Furthermore, the abuse of discretion must be so flagrant to amount to a refusal to perform a duty or to act as provided by law. *Career Philippines Shipmanagement, Inc. v. Serna*, citing *Montoya v. Transmed*, provides the parameters of judicial review for a labor case under Rule 45: x x x In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; *we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.* In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.

2. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; TERMINATION; JUST CAUSES; REDUNDANCY; ELEMENTS; GOOD FAITH REQUIRES SUBSTANTIAL BASIS TO DECLARE REDUNDANCY.— Redundancy is one of the authorized causes for the termination of employment provided for in Article 298 of the Labor Code, x x x *Wiltshire File Co. Inc. v. National Labor Relations Commission* has explained that redundancy exists when "the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise." While a declaration of redundancy is ultimately a management decision in exercising its business judgment, and the employer is not obligated to keep in its payroll more employees than are needed for its day-to-day operations, management must not violate the law nor declare redundancy without sufficient basis. *Asian Alcohol*

Corporation v. National Labor Relations Commission listed down the elements for the valid implementation of a redundancy program: For the implementation of a redundancy program to be valid, the employer must comply with the following requisites: (1) written notice served on both the employees and the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished. To establish good faith, the company must provide substantial proof that the services of the employees are in excess of what is required of the company, and that fair and reasonable criteria were used to determine the redundant positions.

3. ID.; ID.; ID.; ID.; ID.; SEPARATION PAY BROUGHT ABOUT BY REDUNDANCY IS A STATUTORY RIGHT; THAT THE RETIREMENT BENEFITS TOGETHER WITH THE SEPARATION PAY RESULTED IN A TOTAL AMOUNT THAT APPEARED TO BE MORE THAN WHAT IS REQUIRED BY LAW IS IRRELEVANT.— For either redundancy or retrenchment, [Article 298 of the Labor Code] requires that the employer give separation pay equivalent to at least one (1) month pay of the affected employee, or at least one (1) month pay for every year of service, whichever is higher. x x x *Aquino v. National Labor Relations Commission* differentiated between separation pay and retirement benefits: Separation pay is x x x a statutory right designed to provide the employee with the wherewithal during the period that he is looking for another employment. Retirement benefits, where not mandated by law, may be granted by agreement of the employees and their employer or as a voluntary act on the part of the employer. Retirement benefits are intended to help the employee enjoy the remaining years of his life, lessening the burden of worrying for his financial support, and are a form of reward for his loyalty and service to the employer. Separation pay brought about by redundancy is a statutory right, and it is irrelevant that the retirement benefits together with the separation pay given to the terminated workers resulted in a total amount that appeared to be more than what is required by the law.

4. ID.; ID.; ID.; ORDER OF REINSTATEMENT DISTINGUISHED FROM RETURN TO WORK ORDER.— An order of reinstatement is different from a return-to-work order. The award of reinstatement, including backwages, is awarded by a Labor Arbiter to an illegally dismissed employee pursuant to Article 294 of the Labor Code: x x x If actual reinstatement is no longer possible, the employee becomes entitled to separation pay in lieu of reinstatement. On the other hand, a return-to-work order is issued by the Secretary of Labor and Employment when he or she assumes jurisdiction over a labor dispute in an industry that is considered indispensable to the national interest. x x x Return-to-work and reinstatement orders are both immediately executory; however, a return-to-work order is interlocutory in nature, and is merely meant to maintain *status quo* while the main issue is being threshed out in the proper forum. In contrast, an order of reinstatement is a judgment on the merits handed down by the Labor Arbiter pursuant to the original and exclusive jurisdiction provided for under Article 224(a) of the Labor Code.

APPEARANCES OF COUNSEL

Anonuevo Law Office for petitioner.

Sanidad Abaya Te Viterbo Enriquez & Tan Law Firm for petitioner.

Siguion Reyna Montecillo & Ongsiako for respondent.

D E C I S I O N

LEONEN, *J.*:

An employer's declaration of redundancy becomes a valid and authorized cause for dismissal when the employer proves by substantial evidence that the services of an employee are more than what is reasonably demanded by the requirements of the business enterprise.[1]

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[1] *Wiltshire File Co. Inc. v. National Labor Relations Commission,* 271 Phil. 694, 703 (1991) [Per *J.* Feliciano, Third Division].

This resolves the Petition for Review on Certiorari[2] filed by Manggagawa ng Komunikasyon sa Pilipinas assailing the Court of Appeals' Decision[3] dated August 28, 2008 and Resolution[4] dated November 24, 2009 in CA-G.R. SP No. 94365 and CA-G.R. SP No. 98975. CA-G.R. SP No. 94365 upheld the October 28, 2005[5] and January 31, 2006[6] Resolutions of the National Labor Relations Commission in NLRC Certified Case No. 000232-03 (NLRC NCR NS 11-405-02 & 11-412-02). In turn, CA-G.R. SP No. 98975 upheld the Secretary of Labor and Employment's August 11, 2006 Resolution[7] and March 16, 2007 Order.[8]

On June 27, 2002, the labor organization Manggagawa ng Komunikasyon sa Pilipinas, which represented the employees of Philippine Long Distance Telephone Company, filed a notice of strike with the National Conciliation and Mediation Board.[9] Manggagawa ng Komunikasyon sa Pilipinas charged Philippine Long Distance Telephone Company with unfair labor practice "for transferring several employees of its Provisioning Support Division to Bicutan, Taguig."[10]

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[2] *Rollo,* pp. 9-48.

[3] *Id*. at 50-60. The Decision was penned by Associate Justice Lucas P. Bersamin and concurred in by Associate Justices Estela M. Perlas-Bernabe and Ramon M. Bato, Jr. of the Seventeenth Division, Court of Appeals, Manila.

[4] *Id*. at 62-63. The Resolution was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Josefina Guevara-Salonga and Estela M. Perlas-Bernabe of the Special Former Seventeenth Division, Court of Appeals, Manila.

[5] *Id*. at 96-113.

[6] *Id*. at 115-116.

[7] *Id*. at 669-670.

[8] *Id*. at 671-673.

[9] *Id*. at 51.

[10] *Id*.

The first notice of strike was amended twice by Manggagawa ng Komunikasyon sa Pilipinas.[11] On its second amendment dated November 4, 2002, docketed as NCMB-NCR-NS No. 11-405-02,[12] Manggagawa ng Komunikasyon sa Pilipinas accused Philippine Long Distance Telephone Company of the following unfair labor practices:

> UNFAIR LABOR PRACTICES, to wit:
>
> 1. PLDT's abolition of the Provisioning Support Division. Such action, together with the consequent redundancy of PSD employees and the farming out of the jobs to casuals and contractuals, violates the duty to bargain collectively with MKP in good faith.
>
> 2. PLDT's unreasonable refusal to honor its commitment before this Honorable Office that it will provide MKP its comprehensive plan/s with respect to personnel downsizing/ reorganization and closure of exchanges. Such refusal violates its duty to bargain collectively with MKP in good faith.
>
> 3. PLDT's continued hiring of "contractual," "temporary," "project," and "casual" employees for regular jobs performed by union members, resulting in the decimation of the union membership and in the denial of the right to self-organization to the concerned employees.[13]

On November 11, 2002, while the first notice of strike was pending, Manggagawa ng Komunikasyon sa Pilipinas filed another notice of strike,[14] docketed as NCMB-NCR-NS No. 11-412-02, and accused Philippine Long Distance Telephone Company of:

> UNFAIR LABOR PRACTICES, to wit:
>
> 1. PLDT's alleged restructuring of its [Greater Metropolitan Manila] Operation Services December 31, 2002 and its closure

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[11] *Id.* at 51-52.

[12] *Id.* at 272.

[13] *Id.*

[14] *Id.* at 273-274.

> of traffic operations at the Batangas, Calamba, Davao, Iloilo, Lucena, Malolos and Tarlac Regional Operator Services effective December 31, 2002. These twin moves unjustly imperil the job security of 503 of MKP's members and will substantially decimate the parties' bargaining unit. And in the light of PLDT's previous commitment before this Honorable Office that it will provide MKP its comprehensive plan/s with respect to personnel downsizing/reorganization and closure of exchanges and of its more recent declaration that the Davao operator services will not be closed, these moves are treacherous and are thus violative of PLDT's duty to bargain collectively with MKP in good faith. That these moves were effected with PLDT paying only lip service to its duties under Art. III, Section 8 of the parties' CBA do [sic] signifies PLDT's gross violation of said CBA.[15]

On December 23, 2002, Manggagawa ng Komunikasyon sa Pilipinas went on strike.[16]

On December 31, 2002, Philippine Long Distance Telephone Company declared only 323 employees as redundant as it was able to redeploy 180 of the 503 affected employees to other positions.[17]

On January 2, 2003, the Secretary of Labor and Employment certified the labor dispute for compulsory arbitration.[18] The dispositive portion of the Secretary of Labor and Employment's Order read as follows:

> WHEREFORE, FOREGOING PREMISES CONSIDERED, this Office hereby CERTIFIES the labor dispute at the Philippine Long Distance Telephone Company to the National Labor Relations Commission (NLRC) for compulsory arbitration pursuant to Article 263 (g) of the Labor Code, as amended.

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[15] *Id*. at 273.

[16] *Id*. at 52.

[17] *Id*.

[18] *Id*. at 821-823, Order.

Accordingly, the strike staged by the Union is hereby enjoined. All striking workers are hereby directed to return to work within twenty four (24) hours from receipt of this Order, except those who were terminated due to redundancy. The employer is hereby enjoined to accept the striking workers under the same terms and conditions prevailing prior to the strike. The parties are likewise directed to cease and desist from committing any act that might worsen the situation.

Let the entire records of the case be forwarded to the NLRC for its immediate and appropriate action.

SO ORDERED.[19]

Manggagawa ng Komunikasyon sa Pilipinas filed a Petition for *Certiorari* before the Court of Appeals, challenging the Secretary of Labor and Employment's Order insofar as it created a distinction among the striking workers in the return-to-work order. The petition was docketed as CA-G.R. SP No. 76262.[20]

On November 25, 2003, the Court of Appeals granted the Petition for *Certiorari*, setting aside and nullifying the Secretary of Labor and Employment's assailed Order.[21]

The Philippine Long Distance Telephone Company appealed the Court of Appeals' Decision to this Court. The appeal was docketed as G.R. No. 162783.[22]

On July 14, 2005,[23] this Court upheld the Court of Appeals' Decision, and directed Philippine Long Distance Telephone Company to readmit all striking workers under the same terms and conditions prevailing before the strike. This Court held:

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[19] *Id*. at 822-823.

[20] *Id*. at 52.

[21] *Id*. at 660-668. The Decision was penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong of the Second Division, Court of Appeals, Manila.

[22] *Id*. at 53.

[23] 501 Phil. 704 (2005) [Per *J*. Chico-Nazario, Second Division].

As Article 263(g) is clear and unequivocal in stating that ALL striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit ALL workers under the same terms and conditions prevailing before the strike or lockout, then the unmistakable mandate must be followed by the Secretary.[24]

On October 28, 2005, the National Labor Relations Commission dismissed Manggagawa ng Komunikasyon sa Pilipinas' charges of unfair labor practices against Philippine Long Distance Telephone Company.[25]

The National Labor Relations Commission held that Philippine Long Distance Telephone Company's redundancy program in 2002 was valid and did not constitute unfair legal practice.[26] The redundancy program was due to the decline of subscribers for long distance calls and to fixed line services produced by technological advances in the communications industry.[27] The National Labor Relations Commission ruled that the termination of employment of Philippine Long Distance Telephone Company's employees due to redundancy was legal.[28] The dispositive portion of the National Labor Relations Commission's Resolution read:

WHEREFORE, premises considered, the Union[']s charge of unfair labor practice against PLDT is ordered DISMISSED for lack of merit.

SO ORDERED.[29]

On January 31, 2006, the National Labor Relations Commission denied Manggagawa ng Komunikasyon sa Pilipinas' motion for reconsideration.[30]

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[24] *Id*. at 719.

[25] *Id*. at 96-113, Resolution.

[26] *Id*. at 109-110.

[27] *Id*.

[28] *Id*. at 112-113.

[29] *Id*. at 113.

[30] *Id*. at 115-116, Resolution.

On May 8, 2006, Manggagawa ng Komunikasyon sa Pilipinas filed a Petition for *Certiorari*[31] with the Court of Appeals. The petition was docketed as CA-G.R. SP No. 94365, and it assailed the National Labor Relations Commission's resolutions, which upheld the validity of Philippine Long Distance Telephone Company's redundancy program.[32]

On August 11, 2006, the Secretary of Labor and Employment dismissed Manggagawa ng Komunikasyon sa Pilipinas' Motion for Execution[33] of this Court's July 14, 2005 Decision.[34]

On March 16, 2007, the Secretary of Labor and Employment denied[35] Manggagawa ng Komunikasyon sa Pilipinas' motion for reconsideration.[36]

On May 21, 2007, Manggagawa ng Komunikasyon sa Pilipinas filed a Petition for *Certiorari*[37] before the Court of Appeals, assailing the August 11, 2006 Resolution and March 16, 2007 Order of the Secretary of Labor and Employment. The petition was docketed as CA-G.R. SP No. 98975.

The Court of Appeals consolidated CA-G.R. SP No. 94365 with CA-G.R. SP No. 98975, and dismissed Manggagawa ng Komunikasyon sa Pilipinas' appeals on August 28, 2008.[38]

For CA-G.R. SP No. 94365, the Court of Appeals ruled that the National Labor Relations Commission did not commit grave abuse of discretion when it found that Philippine Long Distance Telephone Company's declaration of redundancy was justified

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[31] *Id.* at 64-94.

[32] *Id.* at 54.

[33] *Id.* at 674-677.

[34] *Id.* at 669-670, Resolution.

[35] *Id.* at 671-673, Order.

[36] *Id.* at 678-686.

[37] *Id.* at 631-657.

[38] *Id.* at 50-60.

and valid, as the redundancy program was based on substantial evidence.[39]

The Court of Appeals also found that Philippine Long Distance Telephone Company's 2002 declaration of redundancy "was not attended by [unfair labor practice] . . . [because it was] transparent and forthright in its implementation of the redundancy program."[40] Philippine Long Distance Telephone Company also successfully redeployed 180 of the 503 affected employees to other positions.[41]

As for CA-G.R. SP No. 98975, the Court of Appeals confirmed that its assailed order of reinstatement indicated that all employees, even those declared separated effective December 31, 2002, should be reinstated *pendente lite*.[42] However, the Court of Appeals stated that the order of reinstatement became moot due to the National Labor Relations Commission's October 28, 2005 Decision, which upheld the validity of the dismissal of the employees affected by the redundancy program.[43]

The Court of Appeals also denied Manggagawa ng Komunikasyon sa Pilipinas' prayer that:

> [T]he affected employees should at least be paid their salaries during the period from January 3, 2003 (the working day immediately following the effectivity of their separation) to April 29, 2006 (the date when the October 28, 2005 decision of the NLRC (declaring the employees' dismissal as valid) became final and executory).[44]

The Court of Appeals compared the case to an illegal dismissal case where the Labor Arbiter found for the employee and ordered the payroll reinstatement of the employee; however, the finding of illegality was later reversed on appeal.[45]

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[39] *Id.* at 56.

[40] *Id.* at 57.

[41] *Id.*

[42] *Id.* at 59.

[43] *Id.*

[44] *Id.*

[45] *Id.* at 59-60.

The dispositive portion of the Court of Appeals' Decision read:

> WHEREFORE, the PETITIONS FOR *CERTIORARI* IN CA-G.R. SP Nos. 94365 and 98975 are DISMISSED for lack of merit.
>
> SO ORDERED.[46] (Emphasis in the original)

On November 24, 2009, the Court of Appeals denied Manggagawa ng Komunikasyon sa Pilipinas' motion for reconsideration.[47]

In its Petition for Review on Certiorari, Manggagawa ng Komunikasyon sa Pilipinas states that employees in the Provisioning Support Division and in the Operator Services Section had their positions declared redundant in 2002.[48] Manggagawa ng Komunikasyon sa Pilipinas asserts that the total number of rank-and-file positions actually declared redundant was 538, or 35 positions in the Provisioning Support Division and 503 positions in the Operator Services Section.[49]

Manggagawa ng Komunikasyon sa Pilipinas maintains that Philippine Long Distance Telephone Company failed to submit evidence in support of its declaration of redundancy of the 35 rank-and-file employees in the Provisioning Support Division.[50] It claimed that "[Philippine Long Distance Telephone Company] only notified [the Department of Labor and Employment] of the 'closure of traffic operations at Regional Operator Services affecting three hundred ninety-two (392) employees and the restructuring of [Greater Metropolitan Manila] Operator Services affecting one hundred eleven (111) employees.'"[51] Manggagawa

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[46] *Id.* at 60.

[47] *Id.* at 62-63.

[48] *Id.* at 31.

[49] *Id.*

[50] *Id.* at 1098, MKP Memorandum. The memorandum mistakenly reported this as 335 rank-and-file employees.

[51] *Id.* at 1098-1099.

ng Komunikasyon sa Pilipinas asserts that there was no notice given regarding the closure of Philippine Long Distance Telephone Company's Provisioning Support Division, and the termination of employment due to redundancy of the affected rank-and-file employees.[52] It points out that the justifications for the redundancy put forth by Philippine Long Distance Telephone Company "only pertained to the affected operator services positions and not the affected [Provisioning Support Division] positions."[53]

Manggagawa ng Komunikasyon sa Pilipinas also maintains that the National Labor Relations Commission committed grave abuse of discretion when it disallowed the written interrogatories that Manggagawa ng Komunikasyon sa Pilipinas submitted.[54]

As for the issue of reinstatement *pendente lite*, Manggagawa ng Komunikasyon sa Pilipinas cites *Garcia v. Philippine Airlines, Inc.*[55] to bolster its stand. It holds that an employee is entitled to reinstatement or backwages pending appeal if the Labor Arbiter's finding of illegal dismissal is later on reversed by the National Labor Relations Commission.[56]

For its part, Philippine Long Distance Telephone Company claims that the validity of redundancy of the affected Provisioning Support Division employees was only raised by Manggagawa ng Komunikasyon sa Pilipinas for the first time on appeal.[57] Philippine Long Distance Telephone Company asserts that the real issue in that case was whether Philippine Long Distance Telephone Company was obligated to transfer the affected Provisioning Support Division employees, and not whether their redundancies were valid.[58] Philippine Long Distance Telephone

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[52] *Id.* at 1099.

[53] *Id.*

[54] *Id.* at 1101-1107.

[55] 596 Phil. 510 (2009) [Per *J.* Carpio Morales, *En Banc*].

[56] *Rollo*, p. 39.

[57] *Id.* at 795-796, Comment.

[58] *Id.* at 797, Comment.

Company maintains that the affected Provisioning Support Division personnel were given the opportunity to apply for another division, yet they chose not to.[59]

Philippine Long Distance Telephone Company avers that Manggagawa ng Komunikasyon sa Pilipinas' resort to interrogatories has been denied with finality by the Court of Appeals.[60] It also claims that the National Labor Relations Commission's Rules of Procedure do not allow the use of discovery proceedings; thus, Manggagawa ng Komunikasyon sa Pilipinas cannot assert that their resort to interrogatories is a matter of procedural right.[61]

Philippine Long Distance Telephone Company states that neither the Court of Appeals nor the Supreme Court ordered the reinstatement of Manggagawa ng Komunikasyon sa Pilipinas' members, since their decisions set aside Secretary of Labor and Employment's January 2, 2003 Order.[62] The order enjoined the striking workers to return to work, except those who were terminated due to redundancy.[63] Philippine Long Distance Telephone Company asserts that "what controls execution is the dispositive or decretal statement of the [d]ecision sought to be executed."[64] Furthermore, Philippine Long Distance Telephone Company maintains that the Court of Appeals correctly ruled that the reinstatement of the excluded employees was rendered moot when the National Labor Relations Commission upheld its redundancy program.[65]

Finally, Philippine Long Distance Telephone Company holds that *Garcia* is not applicable because the case at bar does not involve a reinstatement award by a Labor Arbiter.[66]

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[59] *Id.* at 1038, PLDT Memorandum.

[60] *Id.* at 798-804, Comment.

[61] *Id.* at 1052, PLDT Memorandum.

[62] *Id.* at 1056-1057.

[63] *Id.* at 1056.

[64] *Id.* at 1057.

[65] *Id.* at 1063.

[66] *Id.* at 1064-1065.

We resolve the following issues:

First, whether the Court of Appeals committed grave abuse of discretion in upholding the validity of Philippine Long Distance Telephone Company's 2002 redundancy program; and

Second, whether the return-to-work order of the Secretary of Labor and Employment was rendered moot when the National Labor Relations Commission upheld the validity of the redundancy program.

The Petition is partly meritorious.

I

A petition for review on *certiorari* under Rule 45 is a mode of appeal where the issue is limited only to questions of law.[67] In labor cases, a Rule 45 petition "can prosper only if the Court of Appeals . . . fails to correctly determine whether the National Labor Relations Commission committed grave abuse of discretion."[68]

A court or tribunal is said to have acted with grave abuse of discretion when it capriciously acts or whimsically exercises judgment to be "equivalent to lack of jurisdiction."[69] Furthermore, the abuse of discretion must be so flagrant to amount to a refusal to perform a duty or to act as provided by law.[70]

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[67] RULES OF COURT, Rule 45, Sec. 1 provides:

Section 1. Filing of petition with Supreme Court. – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[68] *Philippine Airlines v. Dawal,* G.R. Nos. 173921 and 173952, February 24, 2016 [Per *J.* Leonen, Second Division].

[69] *Hongkong Shanghai Banking Corporation Employees Union v. National Labor Relations Commission*, 421 Phil. 864, 870 (2001) [Per *J.* Sandoval-Gutierrez, Third Division].

[70] *Id*.

Career Philippines Shipmanagement, Inc. v. Serna,[71] citing *Montoya v. Transmed*,[72] provides the parameters of judicial review for a labor case under Rule 45:

As a rule, only questions of law may be raised in a Rule 45 petition. In one case, we discussed the particular parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, as follows:

> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; *we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.* In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.[73] (Emphasis in the original)

Justice Arturo D. Brion's dissent in *Abbot Laboratories, Philippines v. Alcaraz*[74] thereafter laid down the guidelines to be followed in reviewing a petition for review under Rule 45:

If the NLRC ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, ***dismiss*** the petition. If grave abuse of discretion exists, then the CA must grant the petition and nullify the NLRC ruling, entering at the same time the ruling that is justified under the evidence and the governing law, rules and

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[71] 700 Phil. 1 (2012) [Per *J.* Brion, Second Division].

[72] 613 Phil. 696 (2009) [Per *J.* Brion, Second Division].

[73] *Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1, 9 (2012) [Per *J.* Brion, Second Division], citing *Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 707 (2009) [Per *J.* Brion, Second Division].

[74] 714 Phil. 510 (2013) [Per *J.* Perlas-Bernabe, *En Banc*].

jurisprudence. In our Rule 45 review, this Court must ***deny*** the petition if it finds that the CA correctly acted.[75] (Emphasis in the original)

We shall adopt these parameters in resolving the substantive issues in the Petition.

II

Redundancy is one of the authorized causes for the termination of employment provided for in Article 298[76] of the Labor Code, as amended:

> Article 298. Closure of Establishment and Reduction of Personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Wiltshire File Co. Inc. v. National Labor Relations Commission[77] has explained that redundancy exists when "the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise."[78]

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[75] Dissenting Opinion of *J.* Brion in *Abott Laboratories, Philippines v. Alcaraz*, 714 Phil. 510, 549 (2013) [Per *J.* Perlas-Bernabe, *En Banc*].

[76] Article 298 was formerly Article 283, before it was renumbered by DOLE Department Advisory No. 1, Series of 2015.

[77] 271 Phil. 694 (1991) [Per *J.* Feliciano, Third Division].

[78] *Id.* at 703.

While a declaration of redundancy is ultimately a management decision in exercising its business judgment, and the employer is not obligated to keep in its payroll more employees than are needed for its day-to-day operations,[79] management must not violate the law nor declare redundancy without sufficient basis.[80]

Asian Alcohol Corporation v. National Labor Relations Commission[81] listed down the elements for the valid implementation of a redundancy program:

> For the implementation of a redundancy program to be valid, the employer must comply with the following requisites: (1) written notice served on both the employees and the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.[82] (Citations omitted)

To establish good faith, the company must provide substantial proof that the services of the employees are in excess of what is required of the company, and that fair and reasonable criteria were used to determine the redundant positions.[83]

In order to prove the validity of its redundancy program, Philippine Long Distance Telephone Company has presented data on the decreasing volume of the received calls by the Operator Services Center for the years 1996 to 2002:[84]

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[79] *Id*.

[80] *General Milling Corp. v. Viajar,* 702 Phil. 532, 543 (2013) [Per *J*. Reyes, First Division].

[81] 364 Phil. 912 (1999) [Per *J*. Puno, Second Division].

[82] *Id*. at 930.

[83] *General Milling Corp. v. Viajar,* 702 Phil. 532, 543 (2013) [Per *J*. Reyes, First Division].

[84] *Rollo,* p. 412.

RECEIVED CALLS			
YEAR	108	109	TOTAL
1996	33,641,751	430,125,633	463,767,384
1997	34,834,800	318,942,573	353,777,373
1998	28,651,703	209,458,041	238,109,744
1999	24,797,870	212,363,846	237,161,716
2000	21,697,367	218,380,277	240,077,644
2001	15,773,988	158,310,276	174,084,264
2002	14,363,918	114,430,469	128,794,387

Philippine Long Distance Telephone Company has stated that "from 1996 to 2002, the [t]otal [d]emand of [c]alls dropped by 334,972,997 or a 72% reduction."[85] It has attributed the reduction of demand for operator-assisted 108/109 calls to "migration calls to direct distance dialing," and to "more usage/ substitution of text message over voice."[86] It has added that "migration of calls from landline to cell," competitors' eating into the Philippine Long Distance Telephone Company's market, and "compliance with the regulatory requirement of local integration per province" likewise aggravated the situation.[87]

Philippine Long Distance Telephone Company claims that the pattern of decline with operator-assisted calls has been consistent through the years,[88] and it has summarized the challenges facing its long distance services as follows:

(a) international long distance revenues in 2001 stood at P11.4 billion; in 2002, this declined to ₱10.6 billion (pg. 33, PLDT's Financial Statement and Annual Report; Annex "4-A") — a decrease of ₱813 million. More drastically, this figure stood at ₱18.2 billion in 1997, indicating that international

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[85] *Id*. at 413.

[86] *Id*.

[87] *Id*.

[88] *Id*. at 260, PLDT Position Paper.

long distance call revenue has declined to the tune of ₱8 billion in five years!

(b) national long distance revenues in 2001 were ₱8.388 billion in 2001; in 2002, this declined to ₱7.6 billion (pg. 35, PLDT's Financial Statement and Annual Report; Annex "4-B") — a decrease of ₱719 million. As with international calls, there is a pattern on decline: PLDT earned ₱10.6 billion from this service in 2000, so it is accurate to say that the company has seen revenue from national long distance decline by more than a billion pesos a year.[89]

The National Labor Relations Commission has found that Philippine Long Distance Telephone Company was able to discharge its burden of proving that its redundancy measures had substantial basis:

Guided by the foregoing jurisprudence, it is evident that PLDT discharged the burden of proving that the declaration or implementation of redundancy measures have basis. For one, PLDT experienced a decline of subscribers, long distance calls, operated both local and abroad, has declined, landline or fixed line services also declined. This decrease of the need of PLDT services resulted from the advent of wireless telephone, of texting as means of communication, the use of direct dialing including prepaid telesulit and teletipid measures introduced in the communication services. For another, PLDT has a debt burden of ₱70 billion pesos and it cannot subsidize the salaries of employees whose positions are redundant.[90]

The Court of Appeals echoed the findings of the National Labor Relations Commission regarding the validity of Philippine Long Distance Telephone Company's redundancy measures:

We find that MKP demonstrated no such patent and gross evasion of a positive duty on the part of the NLRC. On the contrary, the NLRC's finding that the 2002 redundancy declaration of PLDT was justified and valid rested on substantial evidence, for the NLRC ostensibly based its finding on established facts showing the decline of subscribers, the decline in long distance local and international

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[89] *Id.* at 261-262.

[90] *Id.* at 109-110, Resolution.

calls, and the decline in landline or fixed line services, constraining PLDT to declare certain positions redundant. There could be no question that such factual circumstances were traceable to "the advent of wireless telephone, of texting as a means of communication, the use of direct dialing including prepaid *telesulit* and *teletipid* measures introduced in the communication services."

As such, the NLRC did not commit any grave abuse of discretion when it regarded the technological advancements resulting in less work for the redundated employees as justifying PLDT's declaration of redundancy.[91]

This Court sees no reason to depart from the findings of the Court of Appeals and of the National Labor Relations Commission.

Philippine Long Distance Telephone Company's declaration of redundancy was backed by substantial evidence showing a consistent decline for operator-assisted calls for both local and international calls because of cheaper alternatives like direct dialing services, and the growth of wireless communication. Thus, the National Labor Relations Commission did not commit grave abuse of discretion when it upheld the validity of PLDT's redundancy program. Redundancy is ultimately a management prerogative, and the wisdom or soundness of such business judgment is not subject to discretionary review by labor tribunals or even this Court, as long as the law was followed and malicious or arbitrary action was not shown.[92]

III

Nonetheless, there is a need to review the redundancy package awarded to the employees terminated due to redundancy. For either redundancy or retrenchment, the law requires that the employer give separation pay equivalent to at least one (1) month pay of the affected employee, or at least one (1) month pay for every year of service, whichever is higher. The employer must

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[91] *Id.* at 56.

[92] *Wiltshire File Co., Inc. v National Labor Relations Commission,* 271 Phil. 694, 703-704 (1991) [Per *J.* Feliciano, Third Division].

also serve a written notice on both the employees and the Department of Labor and Employment at least one (1) month before the effective date of termination due to redundancy or retrenchment.[93]

While we agree that Philippine Long Distance Telephone Company complied with the notice requirement, the same cannot be said as regards the separation pay received by some of the affected workers.

Philippine Long Distance Telephone Company claims that most employees who were declared redundant received a very generous separation package or "as much as 2.75 months [worth of salary] for every year of service, with the average separation package at [₱]586,580.27."[94] However, the records belie its claims as shown by the notice of termination of employment received by the workers affected by the redundancy program:

November 25, 2002

MYRNA C. CASTRO

OPERATOR SERVICES-NORTH

Dear Ms. Castro:

After a thorough review of operations, Management has determined that there is a need to reduce its manpower requirements considering technological, organization, and process developments. This reduction is inevitable to ensure the company's survival in the long term.

Your position is one of those affected by such changes and developments. Thus, with much regret, your service to the company will be considered completed by **December 30, 2002.**

In recognition of your loyalty and dedicated service, the company is granting a generous separation pay package that will assist you in making the necessary adjustments to your new situation.

This separation package consists of your *regular retirement benefits plus 75% of basic monthly pay for every year of service*, or a minimum

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[93] LABOR CODE, Art. 298.

[94] *Rollo,* p. 1049, PLDT Memorandum.

of 175% of basic monthly pay for every year of service for employees with less than 15 years of service.

Counseling service on financial options in the future will be available to assist you during your period of adjustment.

We would like to take this opportunity to thank you for your service to the Company and wish you well in all your future undertakings.

Very truly yours,

PHILIPPINE LONG DISTANCE TELEPHONE CO., INC

(signed)
ERLINDA S. KABIGTING[95]

(Emphasis supplied)

The notices of termination of employment[96] signed by Erlinda S. Kabigting, Philippine Long Distance Telephone Company Vice-President for Operator Services Section,[97] provided two (2) types of separation packages for the terminated workers. These were: (1) regular retirement benefits plus 75% basic monthly pay for every year of service for employees who had been with Philippine Long Distance Telephone Company for more than 15 years; and (2) 175% of basic monthly pay for every year of service for employees who had been with PLDT for less than 15 years.

When an employer declares redundancy, Article 298 of the Labor Code requires that the employer provides a separation pay equivalent to at least one (1) month pay of the affected employee, or at least one (1) month pay for every year of service, whichever is higher.[98] In this case, Philippine Long Distance

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[95] *Id*. at 496.

[96] *Id*. at 479-557.

[97] *Id*. at 55.

[98] LABOR CODE, Art. 298 provides:

Article 298. Closure of Establishment and Reduction of Personnel. — The employer may also terminate the employment of any employee due to

Telephone Company claims that the terminated workers received a generous separation package of about 2.75 months' worth of salary for every year of service. But it seems that the retirement benefits of the terminated workers were added to the separation pay due them, hence the large payout. This should not be the case.

Aquino v. National Labor Relations Commission[99] differentiated between separation pay and retirement benefits:

> Separation pay is required in the cases enumerated in Articles 283 and 284 of the Labor Code, which include retrenchment, and is computed at at least one month salary or at the rate of one-half month salary for every month of service, whichever is higher. We have held that it is a statutory right designed to provide the employee with the wherewithal during the period that he is looking for another employment.
>
> Retirement benefits, where not mandated by law, may be granted by agreement of the employees and their employer or as a voluntary act on the part of the employer. Retirement benefits are intended to help the employee enjoy the remaining years of his life, lessening the burden of worrying for his financial support, and are a form of reward for his loyalty and service to the employer.[100] (Citation omitted)

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the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[99] 283 Phil. 1 (1992) [Per *J*. Cruz, First Division].

[100] *Id*. at 6.

Separation pay brought about by redundancy is a statutory right, and it is irrelevant that the retirement benefits together with the separation pay given to the terminated workers resulted in a total amount that appeared to be more than what is required by the law. The facts show that instead of the legally required one (1) month salary for every year of service rendered, the terminated workers who were with Philippine Long Distance Telephone Company for more than 15 years received a separation pay of only 75% of their basic pay for every year of service, despite the clear wording of the law.

The workers, who were terminated from employment as a result of redundancy, are entitled to the separation pay due them under the law.

IV

Department of Labor and Employment Secretary Patricia A. Sto. Tomas (Secretary Sto. Tomas) assumed jurisdiction over the labor dispute between Manggagawa ng Komunikasyon sa Pilipinas and Philippine Long Distance Telephone Company pursuant to Article 278(g)[101] of the Labor Code. She

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[101] LABOR CODE, Art. 278 provides:

Article 278 – Strikes, Picketing and Lockouts-

. . . . . .

(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

certified[102] the case to the National Labor Relations Commission for compulsory arbitration. This return-to-work order from the Secretary of Labor and Employment aims to preserve the status *quo ante*[103] while the validity of the redundancy program is being threshed out in the proper forum.

In *Telefunken Semiconductors Employees Union-FFW v. Secretary of Labor,*[104] pending resolution of the legality of the strike, the Secretary of Labor and Employment directed the employer to accept all the striking workers except the Union Officers, shop stewards, and those with pending criminal charges.[105] This Court struck down the Secretary of Labor and Employment's order for being issued with grave abuse of discretion,[106] and directed the employer to accept all the striking workers without qualifications.[107]

The ruling in *Telefunken* cannot be applied to the case at bar.

In *Philippine Long Distance Telephone Co. Inc. v. Manggagawa ng Komunikasyon sa Pilipinas*,[108] which was promulgated on July 14, 2005, this Court struck down the return-to-work order dated January 2, 2003 issued by Secretary Sto. Tomas for being tainted with grave abuse of discretion. We ruled that the return-to-work order should have included all striking workers, and should not have excluded the workers affected by the redundancy program.[109] However, barely three

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[102] *Rollo,* pp. 821–823. Order.

[103] *YSS Employees Union-Philippine Transport and General Workers Organization v YSS Laboratories, Inc.*, 622 Phil. 201, 212-213 (2009) [Per *J.* Chico-Nazario, Third Division].

[104] 347 Phil. 447 (1997) [Per *J.* Bellosillo, First Division].

[105] *Id.* at 456.

[106] *Id.*

[107] *Id.* at 461.

[108] 501 Phil. 704 (2005) [Per *J.* Chico-Nazario, Second Division].

[109] *Id.* at 715.

(3) months after *Philippine Long Distance Telephone Co. Inc.*'s promulgation, the National Labor Relations Commission in its October 28, 2005 Resolution[110] upheld the validity of Philippine Long Distance Telephone Company's redundancy program. This resolution also dismissed the charges of unfair labor practice, and illegal dismissal against Philippine Long Distance Telephone Company.[111]

When petitioner filed its Motion for Execution[112] on January 17, 2006 pursuant to this Court's ruling in *Philippine Long Distance Telephone Co. Inc.*, there was no longer any existing basis for the return-to-work order. This was because the Secretary of Labor and Employment's return-to-work order had been superseded by the National Labor Relations Commission's Resolution. Hence, the Secretary of Labor and Employment did not err in dismissing the motion for execution on the ground of mootness.

Petitioner cites *Garcia v. Philippine Airlines*[113] to support its claim that the affected and striking workers are entitled to reinstatement and backwages from January 2, 2003, when Secretary Sto. Tomas directed the striking workers to return to work, up to April 29, 2006, when the National Labor Relations Commission's Resolution upholding Philippine Long Distance Telephone Company's redundancy program became final and executory.[114]

Petitioner is mistaken.

Garcia upholds the prevailing doctrine that even if a Labor Arbiter's order of reinstatement is reversed on appeal, the employer is obligated "to reinstate and pay the wages of the

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[110] *Rollo*, pp. 96-113.

[111] *Id*. at 112-113.

[112] *Id*. at 674-677.

[113] 596 Phil. 510 (2009) [Per *J*. Carpio Morales, *En Banc*].

[114] *Rollo*, p. 1108.

dismissed employee during the period of appeal until reversal by the higher court."[115]

There is no order of reinstatement from a Labor Arbiter in the case at bar, instead, what is at issue is the return-to-work order from the Secretary of Labor and Employment. An order of reinstatement is different from a return-to-work order.

The award of reinstatement, including backwages, is awarded by a Labor Arbiter to an illegally dismissed employee pursuant to Article 294[116] of the Labor Code:

> Article 294. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to *reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.* (Emphasis supplied)

If actual reinstatement is no longer possible, the employee becomes entitled to separation pay in lieu of reinstatement.[117]

On the other hand, a return-to-work order is issued by the Secretary of Labor and Employment when he or she assumes jurisdiction over a labor dispute in an industry that is considered indispensable to the national interest. Article 278(g) of the Labor Code provides that the assumption and certification of the Secretary of Labor and Employment shall automatically enjoin the intended or impending strike. When a strike has already taken place at the time the Secretary of Labor and Employment assumes jurisdiction over the labor dispute, all

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[115] *Garcia v. Philippine Airlines,* 596 Phil. 510, 536 (2009) [Per *J*. Carpio Morales, *En Banc*].

[116] Art. 294 was formerly Art. 279, before it was renumbered by DOLE Department Advisory No. 1, Series of 2015.

[117] *Golden Ace Builders, et al. v. Talde*, 634 Phil. 364, 370 (2010) [Per *J*. Carpio Morales, First Division].

striking employees shall immediately return to work. Moreover, the employer shall immediately resume operations, and readmit all workers under the same terms and conditions prevailing before the strike.

Return-to-work and reinstatement orders are both immediately executory; however, a return-to-work order is interlocutory in nature, and is merely meant to maintain *status quo* while the main issue is being threshed out in the proper forum. In contrast, an order of reinstatement is a judgment on the merits handed down by the Labor Arbiter pursuant to the original and exclusive jurisdiction provided for under Article 224(a)[118] of the Labor

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[118] Art. 224 was formerly Art. 217, before it was renumbered by the DOLE Department Advisory No. 1, Series of 2015.

LABOR CODE, Art. 224 provides:

Art. 224. Jurisdiction of the Labor Arbiters and the Commission.

(a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

(1) Unfair labor practice cases;

(2) Termination disputes;

(3) If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

(4) Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

(5) Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and

(6) Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

Code. Clearly, *Garcia* is not applicable in the case at bar, and there is no basis to reinstate the employees who were terminated as a result of redundancy.

WHEREFORE, premises considered, the Petition is **PARTIALLY GRANTED**. The Court of Appeals' August 28, 2008 Decision and November 24, 2009 Resolution in CA-G.R. SP No. 94365 and CA-G.R. SP No. 98975 are **AFFIRMED with MODIFICATION**. Private respondent Philippine Long Distance Telephone Company, Inc. is **DIRECTED** to pay the workers affected by its 2002 redundancy program and who had been employed for more than fifteen (15) years prior to their dismissal, the balance of the separation pay due them or a sum equivalent to twenty-five percent (25%) of their basic monthly pay for every year of service with Philippine Long Distance Telephone Company, Inc.

A legal interest of 6% per annum[119] shall be imposed on the total judgment award from the finality of this Decision until its full satisfaction.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Mendoza,* and *Martires, JJ.,* concur.

(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

[119] *Nacar v. Gallery Frames,* 716 Phil 267, 282-283 (2013) [Per *J*. Peralta, *En Banc*].

FIRST DIVISION

[G. R. No. 194533. April 19, 2017]

PHILIPPINE STEEL COATING CORP., *petitioner, vs.* **EDUARD QUIÑONES,** *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; SALES; WARRANTIES; WARRANTY, DEFINED AND EXPLAINED.— A warranty is a statement or representation made by the seller of goods – contemporaneously and as part of the contract of sale – that has reference to the character, quality or title of the goods; and is issued to promise or undertake to insure that certain facts are or shall be as the seller represents them. A warranty is not necessarily written. It may be oral as long as it is not given as a mere opinion or judgment. Rather, it is a positive affirmation of a fact that buyers rely upon, and that influences or induces them to purchase the product.

2. ID.; ID.; ID.; ID.; AN EXPRESS WARRANTY CAN BE ORAL WHEN IT IS A POSITIVE AFFIRMATION OF A FACT THAT THE BUYER RELIED ON.— [I]t was not accurate for petitioner to state that they had made no warranties. It insisted that at best, they only gave "assurances" of possible savings Quiñones might have if he relied on PhilSteel's primer-coated G.I. sheets and eliminated the need to apply an additional primer. All in all, these "vague oral statements" were express affirmations not only of the costs that could be saved if the buyer used PhilSteel's G.I. sheets, but also of the compatibility of those sheets with the acrylic painting process customarily used in Amianan Motors. Angbengco did not aimlessly utter those "vague oral statements" for nothing, but with a clear goal of persuading Quiñones to buy PhilSteel's product. Taken together, the oral statements of Angbengco created an express warranty. They were positive affirmations of fact that the buyer relied on, and that induced him to buy petitioner's primer-coated G.I. sheets. Under Article 1546 of the Civil Code, "[n]o affirmation of the value of the thing, nor any statement purporting to be a statement of the seller's opinion only, shall be construed as a warranty, unless the seller made such affirmation or statement as an expert and it was relied upon by the buyer." Despite its claims to the

contrary, petitioner was an expert in the eyes of the buyer Quiñones. The latter had asked if the primer-coated G.I. sheets were compatible with Amianan Motors' acrylic painting process. Petitioner's former employee, Lopez, testified that he had to refer Quiñones to the former's immediate supervisor, Angbengco, to answer that question. As the sales manager of PhilSteel, Angbengco made repeated assurances and affirmations and even invoked laboratory tests that showed compatibility. In the eyes of the buyer Quiñones, PhilSteel – through its representative, Angbengco – was an expert whose word could be relied upon.

3. ID.; ID.; ID.; ID.; THE FOUR YEARS PRESCRIPTIVE PERIOD OF THE EXPRESS WARRANTY APPLIES IN CASE AT BAR.— Neither the CA nor the RTC ruled on the prescription period applicable to this case. There being an express warranty, this Court holds that the prescription period applicable to the instant case is that prescribed for breach of an express warranty. The applicable prescription period is therefore that which is specified in the contract; in its absence, that period shall be based on the general rule on the rescission of contracts: four years (*see* Article 1389, Civil Code). In this case, no prescription period specified in the contract between the parties has been put forward. Quiñones filed the instant case on 6 September 1996 or several months after the last delivery of the thing sold. His filing of the suit was well within the prescriptive period of four years; hence, his action has not prescribed.

4. ID.; ID.; ID.; ID.; THE BUYER WAS NOT NEGLIGENT IN THE INSTANT CASE AND SHOULD NOT BE BLAMED FOR HIS LOSSES.— It bears reiteration that Quiñones had already raised the compatibility issue at the outset. He relied on the manpower and expertise of PhilSteel, but at the same time reasonably asked for more details regarding the product. It was not an impulsive or rush decision to buy. In fact, it took 4 to 5 meetings to convince him to buy the primed G.I. sheets. And even after making an initial order, he did not make subsequent orders until after a painting test, done upon the instructions of Angbengco proved successful. The test was conducted using their acrylic paint over PhilSteel's primer-coated G.I. sheets. Only then did Quiñones make subsequent orders of the primer-coated product, which was then used in the mass production of bus bodies by Amianan Motors. This Court holds that Quiñones was not negligent and should therefore not be blamed for his losses.

5. ID.; ID.; ID.; ID.; WHERE THE BREACH OF WARRANTY WAS ESTABLISHED, NONPAYMENT OF THE UNPAID PURCHASE PRICE WAS JUSTIFIED.— Quiñones has opted for a reduction in price or nonpayment of the unpaid balance of the purchase price. Applying Article 1599 (1), this Court grants this remedy. The above provisions define the remedy of recoupment in the diminution or extinction of price in case of a seller's breach of warranty. According to the provision, recoupment refers to the reduction or extinction of the price of the same item, unit, transaction or contract upon which a plaintiff's claim is founded. In the case at bar, Quiñones refused to pay the unpaid balance of the purchase price of the primer-coated G.I. sheets PhilSteel had delivered to him. He took this action after complaints piled up from his customers regarding the blistering and peeling-off of the paints applied to the bus bodies they had purchased from his Amianan Motors. The unpaid balance of the purchase price covers the same G.I. sheets. Further, both the CA and the RTC concurred in their finding that the seller's breach of express warranty had been established. Therefore, this Court finds that respondent has legitimately defended his claim for reduction in price and is no longer liable for the unpaid balance of the purchase price of ₱448,041.50.

APPEARANCES OF COUNSEL

Most Law for petitioner.
Yabes & Yabes-Alvarez Law Offices for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision[1] and Resolution.[2] The CA affirmed *in toto* the Regional

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[1] *Rollo,* pp. 46-60; dated 17 March 2010; penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Isaias P. Dicdican (acting Chairperson) and Pampio A. Abarintos concurring.

[2] *Id*. at 61-63; dated 19 November 2010.

Trial Court (RTC) Decision in Civil Case No. A-1708 for damages.[3]

THE FACTS

This case arose from a Complaint for damages filed by respondent Quiñones (owner of Amianan Motors) against petitioner PhilSteel. The Complaint alleged that in early 1994, Richard Lopez, a sales engineer of PhilSteel, offered Quiñones their new product: primer-coated, long-span, rolled galvanized iron (G.I.) sheets. The latter showed interest, but asked Lopez if the primer-coated sheets were compatible with the Guilder acrylic paint process used by Amianan Motors in the finishing of its assembled buses. Uncertain, Lopez referred the query to his immediate superior, Ferdinand Angbengco, PhilSteel's sales manager.

Angbengco assured Quiñones that the quality of their new product was superior to that of the non-primer coated G.I. sheets being used by the latter in his business. Quiñones expressed reservations, as the new product might not be compatible with the paint process used by Amianan Motors.

Angbengco further guaranteed that a laboratory test had in fact been conducted by PhilSteel, and that the results proved that the two products were compatible; hence, Quiñones was induced to purchase the product and use it in the manufacture of bus units.

However, sometime in 1995, Quiñones received several complaints from customers who had bought bus units, claiming that the paint or finish used on the purchased vehicles was breaking and peeling off. Quiñones then sent a letter-complaint to PhilSteel invoking the warranties given by the latter. According to respondent, the damage to the vehicles was attributable to the hidden defects of the primer-coated sheets and/or their incompatibility with the Guilder acrylic paint process used by Amianan Motors, contrary to the prior evaluations and

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[3] *Id*. at 58, 92-191; dated 31 July 2002.

assurances of PhilSteel. Because of the barrage of complaints, Quiñones was forced to repair the damaged buses.

PhilSteel counters that Quiñones himself offered to purchase the subject product directly from the former without being induced by any of PhilSteel's representatives. According to its own investigation, PhilSteel discovered that the breaking and peeling off of the paint was caused by the erroneous painting application done by Quiñones.

The RTC rendered a Decision[4] in favor of Quiñones and ordered PhilSteel to pay damages. The trial court found that Lopez's testimony was damaging to PhilSteel's position that the latter had not induced Quiñones or given him assurance that his painting system was compatible with PhilSteel's primer-coated G.I. sheets. The trial court concluded that the paint blistering and peeling off were due to the incompatibility of the painting process with the primer-coated G.I. sheets. The RTC also found that the assurance made by Angbengco constituted an express warranty under Article 1546 of the Civil Code. Quiñones incurred damages from the repair of the buses and suffered business reverses. In view thereof, PhilSteel was held liable for damages.

THE RULING OF THE CA

The CA affirmed the ruling of the RTC *in toto*.

The appellate court ruled that PhilSteel in fact made an express warranty that the primer-coated G.I. sheets were compatible with the acrylic paint process used by Quiñones on his bus units. The assurances made by Angbengco were confirmed by PhilSteel's own employee, Lopez.

The CA further held that the cause of the paint damage to the bus units of Quiñones was the incompatibility of the primer-coated sheet with the acrylic paint process used by Amianan Motors. The incompatibility was in fact acknowledged through a letter dated 29 June 1996 from Angbengco himself.[5]

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[4] *Id*. at 92-191.

[5] *Id*. at 54.

The CA also agreed with the RTC that PhilSteel was liable for both actual and moral damages. For actual damages, the appellate court reasoned that PhilSteel committed a breach of duty against Quiñones when the company made assurances and false representations that its primer-coated sheets were compatible with the acrylic paint process of Quiñones. The CA awarded moral damages, ruling that PhilSteel's almost two years of undue delay in addressing the repeated complaints about paint blisters constituted bad faith.

In addition, the CA concurred with the RTC that attorney's fees were in order since Quiñones was forced to file a case to recover damages.

Accordingly, the CA dismissed the appeal of PhilSteel.

Petitioner sought a reversal of the Decision in its Motion for Reconsideration. The motion was, however, denied by the CA in its Resolution dated 19 November 2010.

Hence, this Petition.

ISSUES

Petitioner raises the following issues:

1. Whether vague oral statements made by seller on the characteristics of a generic good can be considered warranties that may be invoked to warrant payment of damages;

2. Whether general warranties on the suitability of products sold prescribe in six (6) months under Article 1571 of the Civil Code;

3. Assuming that statements were made regarding the characteristics of the product, whether respondent as buyer is equally negligent; and

4. Whether non-payment of price is justified on allegations of breach of warranty.[6]

OUR RULING

We **DENY** the Petition.

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[6] *Id*. at 24-25.

This Court agrees with the CA that this is a case of express warranty under Article 1546 of the Civil Code, which provides:

> Any affirmation of fact or any promise by the seller relating to the thing is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the same, and if the buyer purchases the thing relying thereon. No affirmation of the value of the thing, nor any statement purporting to be a statement of the seller's opinion only, shall be construed as a warranty, unless the seller made such affirmation or statement as an expert and it was relied upon by the buyer.

As held in *Carrascoso, Jr. v. CA*,[7] the following requisites must be established in order to prove that there is an express warranty in a contract of sale: (1) the express warranty must be an affirmation of fact or any promise by the seller relating to the subject matter of the sale; (2) the natural effect of the affirmation or promise is to induce the buyer to purchase the thing; and (3) the buyer purchases the thing relying on that affirmation or promise.

An express warranty can be oral when it is a positive affirmation of a fact that the buyer relied on.

Petitioner argues that the purported warranties by mere "vague oral statements" cannot be invoked to warrant the payment of damages.

A warranty is a statement or representation made by the seller of goods — contemporaneously and as part of the contract of sale — that has reference to the character, quality or title of the goods; and is issued to promise or undertake to insure that certain facts are or shall be as the seller represents them.[8] A warranty is not necessarily written. It may be oral as long as it is not given as a mere opinion or judgment. Rather, it is a

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[7] 514 Phil. 48, 75 (2005).

[8] *Ang v. CA,* 588 Phil. 366, 373 (2008) citing *De Leon, Comments and Cases on Sales*, 299 (2000).

positive affirmation of a fact that buyers rely upon, and that influences or induces them to purchase the product.[9]

Contrary to the assertions of petitioner, the finding of the CA was that the former, through Angbengco, did not simply make vague oral statements on purported warranties.[10] Petitioner expressly represented to respondent that the primer-coated G.I. sheets were compatible with the acrylic paint process used by the latter on his bus units. This representation was made in the face of respondent's express concerns regarding incompatibility. Petitioner also claimed that the use of their product by Quiñones would cut costs. Angbengco was so certain of the compatibility that he suggested to respondent to assemble a bus using the primer-coated sheet and have it painted with the acrylic paint used in Amianan Motors.

At the outset, Quiñones had reservations about the compatibility of his acrylic paint primer with the primer-coated G.I. sheets of PhilSteel. But he later surrendered his doubts about the product after 4 to 5 meetings with Angbengco, together with the latter's subordinate Lopez. Only after several meetings was Quiñones persuaded to buy their G.I. sheets. On 15 April 1994, he placed an initial order for petitioner's product and, following Angbengco's instructions, had a bus painted with acrylic paint. The results of the painting test turned out to be successful. Satisfied with the initial success of that test, respondent made subsequent orders of the primer-coated product and used it in Amianan Motors' mass production of bus bodies.[11]

Thus, it was not accurate for petitioner to state that they had made no warranties. It insisted that at best, they only gave "assurances" of possible savings Quiñones might have if he relied on PhilSteel's primer-coated G.I. sheets and eliminated the need to apply an additional primer.[12]

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[9] *Hercules Powder Co. v. Rich,* 3 F, 2d12.

[10] *Rollo*, p. 25.

[11] *Id.* at 52.

[12] *Id.* at 27-28.

All in all, these "vague oral statements" were express affirmations not only of the costs that could be saved if the buyer used PhilSteel's G.I. sheets, but also of the compatibility of those sheets with the acrylic painting process customarily used in Amianan Motors. Angbengco did not aimlessly utter those "vague oral statements" for nothing, but with a clear goal of persuading Quiñones to buy PhilSteel's product.

Taken together, the oral statements of Angbengco created an express warranty. They were positive affirmations of fact that the buyer relied on, and that induced him to buy petitioner's primer-coated G.I. sheets.

Under Article 1546 of the Civil Code, "[n]o affirmation of the value of the thing, nor any statement purporting to be a statement of the seller's opinion only, shall be construed as a warranty, unless the seller made such affirmation or statement as an expert and it was relied upon by the buyer."

Despite its claims to the contrary, petitioner was an expert in the eyes of the buyer Quinones. The latter had asked if the primer-coated G.I. sheets were compatible with Amianan Motors' acrylic painting process. Petitioner's former employee, Lopez, testified that he had to refer Quiñones to the former's immediate supervisor, Angbengco, to answer that question. As the sales manager of PhilSteel, Angbengco made repeated assurances and affirmations and even invoked laboratory tests that showed compatibility.[13] In the eyes of the buyer Quinones, PhilSteel — through its representative, Angbengco — was an expert whose word could be relied upon.

This Court cannot subscribe to petitioner's stand that what they told Quinones was mere dealer's talk or an exaggeration in trade that would exempt them from liability for breach of warranty. Petitioner cites *Gonzalo Puyat & Sons v. Arco Amusement Company,*[14] in which this Court ruled that the contract is the law between the parties and should include all the things

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[13] *Id*. at 233.

[14] 72 Phil. 402 (1941).

they agreed to. Therefore, what does not appear on the face of the contract should be regarded merely as "dealer's" or "trader's talk," which cannot bind either party.[15]

Contrary however to petitioner's position, the so-called dealer's or trader's talk cannot be treated as mere exaggeration in trade as defined in Article 1340 of the Civil Code.[16] Quiñones did not talk to an ordinary sales clerk such as can be found in a department store or even a *sari-sari* store. If Lopez, a sales agent, had made the assertions of Angbengco without true knowledge about the compatibility or the authority to warrant it, then his would be considered dealer's talk. But sensing that a person of greater competence and knowledge of the product had to answer Quinones' concerns, Lopez wisely deferred to his boss, Angbengco.

Angbengco undisputedly assured Quiñones that laboratory tests had been undertaken, and that those tests showed that the acrylic paint used by Quiñones was compatible with the primer-coated G.I. sheets of Philsteel. Thus, Angbengco was no longer giving a mere seller's opinion or making an exaggeration in trade. Rather, he was making it appear to Quiñones that PhilSteel had already subjected the latter's primed G.I. sheets to product testing. PhilSteel, through its representative, was in effect inducing in the mind of the buyer the belief that the former was an expert on the primed G.I. sheets in question; and that the statements made by petitioner's representatives, particularly Angbengco (its sales manager),[17] could be relied on. Thus, petitioner did induce the buyer to purchase the former's G.I. sheets.

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[15] *Ibid.*

[16] The usual exaggerations in trade, when the other party had an opportunity to know the facts, are not in themselves fraudulent.

[17] *Rollo*, p. 103.

The prescription period of the express warranty applies to the instant case.

Neither the CA nor the RTC ruled on the prescription period applicable to this case. There being an express warranty, this Court holds that the prescription period applicable to the instant case is that prescribed for breach of an express warranty. The applicable prescription period is therefore that which is specified in the contract; in its absence, that period shall be based on the general rule on the rescission of contracts: four years (*see* Article 1389, Civil Code).[18] In this case, no prescription period specified in the contract between the parties has been put forward. Quiñones filed the instant case on 6 September 1996[19] or several months after the last delivery of the thing sold.[20] His filing of the suit was well within the prescriptive period of four years; hence, his action has not prescribed.

The buyer cannot be held negligent in the instant case.

Negligence is the absence of reasonable care and caution that an ordinarily prudent person would have used in a given situation.[21] Under Article 1173 of the Civil Code,[22] where it is not stipulated in the law or the contract, the diligence required

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[18] *Civil Code, Art. 1389: "The action to claim rescission must be commenced within four years. x x x"*; *Ang v. CA*, 588 Phil. 366 (2008) citing *Engineering & Machinery Corp. v. CA*, 322 Phil. 161, 173 (1996); *Moles v. Intermediate Appellate Court*, 251 Phil. 711(1989).

[19] *Rollo*, p. 71.

[20] *Id.* at 87.

[21] *Picart v. Smith*, 37 Phil. 809(1918).

[22] *Article 1173*. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of Articles 1171 and 2201, paragraph 2, shall apply. If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.

to comply with one's obligations is commonly referred to as *paterfamilias*; or, more specifically, as *bonos paterfamilias* or "a good father of a family." A good father of a family means a person of ordinary or average diligence. To determine the prudence and diligence that must be required of all persons, we must use as basis the abstract average standard corresponding to a normal orderly person. Anyone who uses diligence below this standard is guilty of negligence.[23]

Respondent applied acrylic primers, which are stronger than epoxy primers. The G.I. sheets of PhilSteel were primer-coated with epoxy primer. By applying the acrylic over the epoxy primer used on the G.I. sheets, the latter primer was either dissolved or stripped off the surface of the iron sheets.[24]

Petitioner alleges that respondent showed negligence by disregarding what it calls a "chemical reaction so elementary that it could not have escaped respondent Quiñones who has been in the business of manufacturing, assembling, and painting motor vehicles for decades."[25] For this supposed negligence, petitioner insists that respondent cannot hide behind an allegation of breach of warranty as an excuse for not paying the balance of the unpaid purchase price.

It bears reiteration that Quiñones had already raised the compatibility issue at the outset. He relied on the manpower and expertise of PhilSteel, but at the same time reasonably asked for more details regarding the product. It was not an impulsive or rush decision to buy. In fact, it took 4 to 5 meetings to convince him to buy the primed G.I. sheets. And even after making an initial order, he did not make subsequent orders until after a painting test, done upon the instructions of Angbengco proved successful. The test was conducted using their acrylic paint over PhilSteel's primer-coated G.I. sheets. Only then did

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[23] Tolentino, Arturo M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Volume IV, 123-124(1991).

[24] *Rollo*, p. 33.

[25] *Ibid.*

Quiñones make subsequent orders of the primer-coated product, which was then used in the mass production of bus bodies by Amianan Motors.[26]

This Court holds that Quiñones was not negligent and should therefore not be blamed for his losses.

The nonpayment of the unpaid purchase price was justified, since a breach of warranty was proven.

Petitioner takes issue with the nonpayment by Quiñones to PhilSteel of a balance of ₱448,041.50, an amount that he has duly admitted.[27] It is the nonpayment of the unpaid balance of the purchase price, of the primer-coated G.I. sheets that is at the center of the present controversy.

Quiñones, through counsel, sought damages against petitioner for breach of implied warranty arising from hidden defects under Article 1561 of the Civil Code, which provides:

> The vendor shall be responsible for warranty against the hidden defects which the thing sold may have, should they render it unfit for the use for which it is intended, or should they diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it; but said vendor shall not be answerable for patent defects or those which may be visible, or for those which are not visible if the vendee is an expert who, by reason of his trade or profession, should have known them.

In seeking a remedy from the trial court, Quiñones opted not to pay the balance of the purchase price, in line with a proportionate reduction of the price under Article 1567 Civil Code, which states:

> In the cases of Articles 1561, 1562, 1564, 1565 and 1566, the vendee may elect between withdrawing from the contract and

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[26] *Id.* at 52.

[27] *Id.* at 68-69.

demanding a proportionate reduction of the price, with damages in either case.

Petitioner reasons that since the action of respondent is based on an implied warranty, the action has already prescribed under Article 1571[28] of the Civil Code. According to petitioner, Quiñones can no longer put up the defense of hidden defects in the product sold as a basis for evading payment of the balance.[29]

We agree with petitioner that the nonpayment of the balance cannot be premised on a mere allegation of nonexisting warranties. This Court has consistently ruled that whenever a breach of warranty is not proven, buyers who refuse to pay the purchase price — or even the unpaid balance of the goods they ordered — must be held liable therefor.[30]

However, we uphold the finding of both the CA and the RTC that petitioner's breach of warranty was proven by respondent.

Since what was proven was express warranty, the remedy for implied warranties under Article 1567 of the Civil Code does not apply to the instant case. Instead, following the ruling of this Court in *Harrison Motors Corporation v. Navarro*,[31] Article 1599 of the Civil Code applies when an express warranty is breached. The provision reads:

> Where there is a breach of warranty by the seller, the buyer may, at his election:
>
> (1) Accept or keep the goods and set up against the seller, the breach of warranty by way of recoupment in diminution or extinction of the price;
>
> (2) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;

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[28] Actions arising from the provisions of the preceding ten articles shall be barred after six months, from the delivery of the thing sold.

[29] *Rollo*, p. 35.

[30] *Carrascoso, Jr. v. CA*, 514 Phil. 48, 74-76 (2005); *Nutrimix Feeds Corporation v. CA*, 484 Phil. 330, 348-349 (2004).

[31] 387 Phil. 216 (2000).

(3) Refuse to accept the goods, and maintain an action against the seller for damages for the breach of warranty;

(4) Rescind the contract of sale and refuse to receive the goods or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

When the buyer has claimed and been granted a remedy in anyone of these ways, no other remedy can thereafter be granted, without prejudice to the provisions of the second paragraph of Article 1191.

Where the goods have been delivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods without protest, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the ownership was transferred to the buyer. But if deterioration or injury of the goods is due to the breach or warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

Where the buyer is entitled to rescind the sale and elects to do so, he shall cease to be liable for the price upon returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods, or immediately after an offer to return the goods in exchange for repayment of the price.

Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the payment of any portion of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by Article 1526.

(5) In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and

> the value they would have had if they had answered to the warranty.

Quiñones has opted for a reduction in price or nonpayment of the unpaid balance of the purchase price. Applying Article 1599 (1), this Court grants this remedy.

The above provisions define the remedy of recoupment in the diminution or extinction of price in case of a seller's breach of warranty. According to the provision, recoupment refers to the reduction or extinction of the price of the same item, unit, transaction or contract upon which a plaintiff's claim is founded.[32]

In the case at bar, Quiñones refused to pay the unpaid balance of the purchase price of the primer-coated G.I. sheets PhilSteel had delivered to him. He took this action after complaints piled up from his customers regarding the blistering and peeling-off of the paints applied to the bus bodies they had purchased from his Amianan Motors. The unpaid balance of the purchase price covers the same G.I. sheets. Further, both the CA and the RTC concurred in their finding that the seller's breach of express warranty had been established. Therefore, this Court finds that respondent has legitimately defended his claim for reduction in price and is no longer liable for the unpaid balance of the purchase price of ₱448,041.50.

The award of attorney's fees is deleted.

Contrary to the finding of the CA and the RTC, this Court finds that attorney's fees are not in order. Neither of these courts cited any specific factual basis to justify the award thereof. Records merely show that Quiñones alleged that he had agreed to pay 25% as attorney's fees to his counsel.[33] Hence, if the award is based on a mere allegation or testimony that a party

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[32] *First United Constructors Corporation v. Bayanihan Automotive Corporation*, 724 Phil. 264 (2014).

[33] *Rollo*, p. 70.

has agreed to pay a certain percentage for attorney's fees, the award is not in order.[34]

WHEREFORE, in view of the foregoing, the instant Petition is **DENIED.** The Court of Appeals Decision dated 17 March 2010 and Resolution dated 19 November 2010 denying petitioner's Motion for Reconsideration are hereby **AFFIRMED,** except for the award of attorney's fees, which is hereby **DELETED.**

SO ORDERED.

Leonardo-de Castro, del Castillo, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 201530. April 19, 2017]

ASIATRUST DEVELOPMENT BANK, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

[G.R. Nos. 201680-81. April 19, 2017]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **ASIATRUST DEVELOPMENT BANK, INC.,** *respondent.*

SYLLABUS

1. TAXATION; TAX ABATEMENT; RR NO. 15-06 PRESCRIBING GUIDELINES ON THE

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[34] *Congregation of the Religious of the Virgin Mary v. CA*, 353 Phil. 591 (1998).

IMPLEMENTATION OF THE ONE-TIME ADMINISTRATIVE ABATEMENT OF ALL PENALTIES/ SURCHARGES AND INTEREST ON DELINQUENT ACCOUNTS AND ASSESSMENTS AS OF JUNE 30, 2006; APPLICATION; APPROVED ONLY UPON THE ISSUANCE OF A TERMINATION LETTER.— Sec. 204(B) of the 1997 National Internal Revenue Code (NIRC) empowers the CIR to abate or cancel a tax liability. On September 27, 2006, the BIR issued RR No. 15-06 prescribing the guidelines on the implementation of the one-time administrative abatement of all penalties/surcharges and interest on delinquent accounts and assessments (preliminary or final, disputed or not) as of June 30, 2006. x x x Based on the guidelines, the last step in the tax abatement process is the issuance of the termination letter. The presentation of the termination letter is essential as it proves that the taxpayer's application for tax abatement has been approved. Thus, without a termination letter, a tax assessment cannot be considered closed and terminated.

2. ID.; COURT OF TAX APPEALS (CTA); AN APPEAL TO THE CTA *EN BANC* MUST BE PRECEDED BY THE FILING OF A TIMELY MOTION FOR RECONSIDERATION OR NEW TRIAL WITH THE CTA DIVISION THAT ISSUED THE ASSAILED DECISION; APPLICABLE IN THE CASE OF AMENDED DECISION.— [Under] Section 1, Rule 8 of the Revised Rules of the CTA x x x in order for the CTA *En Banc* to take cognizance of an appeal *via* a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word "must" indicates that the filing of a prior motion is mandatory, and not merely directory. The same is true in the case of an amended decision. Section 3, Rule 14 of the same rules defines an amended decision as "[a]ny action modifying or reversing a decision of the Court en banc or in Division." As explained in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue,* an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration.

APPEARANCES OF COUNSEL

Tarriela Tagao Ona & Associates for Asiatrust Development Bank Inc.

The Solicitor General for Commissioner of Internal Revenue.

D E C I S I O N

DEL CASTILLO, *J.*:

An application for tax abatement is deemed approved only upon the issuance of a termination letter by the Bureau of Internal Revenue (BIR).

These consolidated Petitions for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assail the November 16, 2011 Decision[2] and the April 16, 2012 Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case Nos. 614 and 677.

Factual Antecedents

On separate dates in February 2000, Asiatrust Development Bank, Inc. (Asiatrust) received from the Commissioner of Internal Revenue (CIR) three Formal Letters of Demand (FLD) with Assessment Notices[4] for deficiency internal revenue taxes in the amounts of ₱131,909,161.85, ₱83,012,265.78, and

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[1] *Rollo* (G.R. No. 201530), pp. 3-23 and *rollo* (G.R. Nos. 201680-81), pp. 122-148.

[2] *Id*. (G.R. No. 201530), pp. 24-51; penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Olga Palanca-Enriquez and Cielito N. Mindaro-Grulla; Associate Justice Juanito C. Castañeda with Concurring and Dissenting Opinion, *id*. at 52-54; Associate Justice Lovell R. Bautista, Jr. with Separate Opinion, *id*. at 55-63; Associate Justices Erlinda P. Uy and Caesar A. Casanova concur with the Separate Opinion of Associate Justice Lovell R. Bautista, Jr.; Justice Amelia R. Cotangco-Manalastas on Official Business.

[3] *Id*. at 66-75.

[4] CTA Division *rollo*, Vol. I, pp. 211-292.

₱144,012,918.42 for fiscal years ending June 30, 1996, 1997, and 1998, respectively.[5]

On March 17, 2000, Asiatrust timely protested the assessment notices.[6]

Due to the inaction of the CIR on the protest, Asiatrust filed before the CTA a Petition for Review[7] docketed as CTA Case No. 6209 praying for the cancellation of the tax assessments for deficiency income tax, documentary stamp tax (DST) – regular, DST – industry issue, final withholding tax, expanded withholding tax, and fringe benefits tax issued against it by the CIR.

On December 28, 2001, the CIR issued against Asiatrust new Assessment Notices for deficiency taxes in the amounts of ₱112,816,258.73, ₱53,314,512.72, and ₱133,013,458.73, covering the fiscal years ending June 30, 1996, 1997, and 1998, respectively.[8]

On the same day, Asiatrust partially paid said deficiency tax assessments thus leaving the following balances:

Fiscal Year 1996	
Documentary Stamp Tax	₱ 13,497,227.80
Final Withholding Tax – Trust	8,770,265.07
Documentary Stamp Tax – Industry Issue	88,584,931.39
TOTAL	**₱ 110,852,424.26**
Fiscal Year 1997	
Documentary Stamp Tax	₱ 10,156,408.63
Documentary Stamp Tax – Industry Issue	39,163,539.57
TOTAL	**₱ 49,319,948.20**

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[5] *Id*. Vol. II, pp. 737-738.

[6] *Id*.

[7] *Id*. Vol. I, pp. 1-21.

[8] *Id*. Vol. II, p. 741.

Fiscal year 1998	
Documentary Stamp Tax	₱ 20,425,770.07
Final Withholding Tax – Trust	10,183,367.80
Documentary Stamp Tax – Industry Issue	93,430,878.54
TOTAL	**₱ 124,040,016.41**[9]

On April 19, 2005, the CIR approved Asiatrust's Offer of Compromise of DST – regular assessments for the fiscal years ending June 30, 1996, 1997, and 1998.[10]

During the trial, Asiatrust manifested that it availed of the Tax Abatement Program for its deficiency final withholding tax – trust assessments for fiscal years ending June 30, 1996 and 1998; and that on June 29, 2007, it paid the basic taxes in the amounts of ₱4,187,683.27 and ₱6,097,825.03 for the said fiscal years, respectively.[11] Asiatrust also claimed that on March 6, 2008, it availed of the provisions of Republic Act (RA) No. 9480, otherwise known as the Tax Amnesty Law of 2007.[12]

Ruling of the Court of Tax Appeals Division

On January 20, 2009, the CTA Division rendered a Decision[13] partially granting the Petition. The CTA Division declared void the tax assessments for fiscal year ending June 30, 1996 for having been issued beyond the three-year prescriptive period.[14] However, due to the failure of Asiatrust to present documentary and testimonial evidence to prove its availment of the Tax Abatement Program and the Tax Amnesty Law, the CTA Division affirmed the deficiency DST- Special Savings Account (SSA)

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[9] *Id*. at 741-742.

[10] *Id*. at 742.

[11] *Id*. Vol. I, pp. 482 and 690 and Vol. II, pp. 742-743 and 754.

[12] *Id*. at Vol. I, pp. 702-703 and Vol. II, p. 756.

[13] *Id*. at Vol. II, pp. 736-758; penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista.

[14] *Id*. at 747-749.

assessments for the fiscal years ending June 30, 1997 and 1998 and the deficiency DST – Interbank Call Loans (IBCL) and deficiency final withholding tax – trust assessments for fiscal year ending June 30, 1998, in the total amount of ₱142,777,785.91.[15] Thus:

> WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, Assessment Notices issued against [Asiatrust] for deficiency documentary stamp, final withholding, expanded withholding, and fringe benefits tax assessments for the fiscal year ended June 30, 1996 are VOID for being [issued] beyond the prescriptive period allowed by law.
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> The Assessment Notices issued by [CIR] against [Asiatrust] for deficiency income, documentary stamp — regular, documentary stamp — trust, and fringe benefits tax assessments for the fiscal years ended June 30, 1997 & 1998 are hereby ordered CANCELLED and WITHDRAWN. Moreover, [Asiatrust's] deficiency documentary stamp tax — IBCL assessment for the fiscal year ended June 30, 1997 is ordered CANCELLED and WITHDRAWN.
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> However, [Asiatrust's] deficiency documentary stamp tax — Special Savings Account assessments for the fiscal years ended June 30, 1997 & 1998, and deficiency documentary stamp tax — IBCL and deficiency final withholding tax — trust assessments for the fiscal year ended June 30, 1998, in the aggregate amount of ₱142,777,785.91 are hereby AFFIRMED. The said amount is broken down as follows:
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> | | |
> |---|---|
> | Fiscal Year 1997 | |
> | Documentary Stamp Tax – Industry Issue | ₱ 39,163,539.57 |
> | Fiscal Year 1998 | |
> | Final Withholding Tax – Trust | 10,183,367.80 |
> | Documentary Stamp Tax – Industry Issue | 93,430,878.54 |
> | **Total Deficiency Tax** | **₱ 142,777,785.91** |
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> SO ORDERED. [16]

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[15] *Id.* at 754-756.

[16] *Id.* at 756-757.

Asiatrust filed a Motion for Reconsideration[17] attaching photocopies of its Application for Abatement Program, BIR Payment Form, BIR Tax Payment Deposit Slip, Improved Voluntary Assessment Program Application Forms, Tax Amnesty Return, Tax Amnesty Payment Form, Notice of Availment of Tax Amnesty and Statement of Assets and Liabilities and Networth (SALN) as of June 30, 2005.

The CIR, on the other hand, filed a Motion for Partial Reconsideration of the assessments assailing the CTA Division's finding of prescription and cancellation of assessment notices for deficiency income, DST – regular, DST – trust, and fringe benefit tax for fiscal years ending June 30, 1997 and 1998.[18]

On July 6, 2009, the CTA Division issued a Resolution[19] denying the motion of the CIR while partially granting the motion of Asiatrust. The CTA Division refused to consider Asiatrust's availment of the Tax Abatement Program due to its failure to submit a termination letter from the BIR.[20] However, as to Asiatrust's availment of the Tax Amnesty Law, the CTA Division resolved to set the case for hearing for the presentation of the originals of the documents attached to Asiatrust's motion for reconsideration.[21]

Meanwhile, the CIR appealed the January 20, 2009 Decision and the July 6, 2009 Resolution before the CTA *En Banc via* a Petition for Review[22] docketed as CTA EB No. 508. The CTA *En Banc* however dismissed the Petition for being premature

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[17] *Id*. at 778-796.

[18] *Id*. at 759-777.

[19] *Id*. at 817-822.

[20] *Id*. at 821.

[21] *Id*. at 821-822.

[22] *Id*. at 1048-1081.

considering that the proceedings before the CTA Division was still pending.[23]

On December 7, 2009, Asiatrust filed a Manifestation[24] informing the CTA Division that the BIR issued a Certification[25] dated August 20, 2009 certifying that Asiatrust paid the amounts of ₱4,187,683.27 and ₱6,097,825.03 at the Development Bank of the Philippines in connection with the One-Time Administrative Abatement under Revenue Regulations (RR) No. 15-2006. [26]

On March 16, 2010, the CTA Division rendered an Amended Decision[27] finding that Asiatrust is entitled to the immunities and privileges granted in the Tax Amnesty Law.[28] However, it reiterated its ruling that in the absence of a termination letter from the BIR, it cannot consider Asiatrust's availment of the Tax Abatement Program.[29] Thus, the CTA Division disposed of the case in this wise:

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[23] *Id*. at 1084-1097; penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Lovell R. Bautista, and Olga Palanca-Enriquez; Associate Justice Caesar A. Casanova on leave.

Note: The CIR elevated the case to the Supreme Court *via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, docketed as G.R. No. 193209. On October 13, 2010, the Supreme Court denied the petition for failure to show any reversible error in the assailed judgment. The CIR moved for reconsideration but the Supreme Court denied the same. On February 11, 2011, the Supreme Court issued an Entry of Judgment. (*rollo* (G.R. No. 201530), p. 363.)

[24] CTA Division *rollo*, Vol. II, pp. 962-964.

[25] *Id*. at 975 (Exhibit "J").

[26] Implementing a One-Time Administrative Abatement of all Penalties/ Surcharges and Interest on Delinquent Accounts and Assessments (Preliminary or Final, Disputed or Not) as of June 30, 2006. Revenue Regulations No. 15-06, (August 18, 2006).

[27] CTA Division *rollo*, Vol. II, pp. 981-986.

[28] *Id*. at 984-985.

[29] *Id*. at 984 and 986.

WHEREFORE, premises considered, [Asiatrust's] *Motion for Reconsideration* is hereby PARTIALLY GRANTED and this Court's *Decision* dated January 20, 2009 is hereby MODIFIED. Accordingly, the above-captioned case as regards [Asiatrust's] liability for deficiency documentary stamp tax is CLOSED and TERMINATED, subject to the provisions of R.A. No. 9480. However, [Asiatrust's] liability for deficiency final withholding tax assessment for fiscal year ended June 30, 1998, subject of this litigation, in the amount of ₱10,183,367.80, is hereby REAFFIRMED.

SO ORDERED.[30]

Still unsatisfied, Asiatrust moved for partial reconsideration[31] insisting that the Certification issued by the BIR is sufficient proof of its availment of the Tax Abatement Program considering that the CIR, despite Asiatrust's request, has not yet issued a termination letter. Asiatrust attached to the motion photocopies of its letter[32] dated March 17, 2009 requesting the BIR to issue a termination letter, Payment Form[33] BIR Tax Payment Deposit Slips,[34] Improved Voluntary Assessment Program (IVAP) Payment Form,[35] and a letter[36] dated October 17, 2007 issued by Revenue District Officer (RDO) Ms. Clavelina S. Nacar.

On July 28, 2010, the CTA Division issued a Resolution[37] denying Asiatrust's motion. The CTA Division maintained that it cannot consider Asiatrust's availment of the Tax Abatement

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[30] *Id*. at 986.

[31] *Id*. at 1001-1008.

[32] *Id*. at 1009-1010.

[33] *Id*. at 1015.

[34] *Id*. at 1013-1014.

[35] *Id*. at 1016.

[36] *Id*. at 1012.
Note: The letter informed Asiatrust that it is not qualified to avail of IVAP. However, the payments it made qualified it for the One-Time Administrative Abatement of all penalties/surcharge and interest. Accordingly, Asiatrust was advised to file the correct set of Payment and Application Form.

[37] *Id*. at 1132-1136.

Program in the absence of a termination letter from the BIR.[38] As to the Certification issued by BIR, the CTA Division noted that it pertains to fiscal period July 1, 1995 to June 30, 1996.[39]

Both parties appealed to CTA *En Banc*.

Ruling of the Court of Tax Appeals En Banc

On November 16, 2011, the CTA *En Banc* denied both appeals. It denied the CIR's appeal for failure to file a prior motion for reconsideration of the Amended Decision,[40] while it denied Asiatrust's appeal for lack of merit.[41] The CTA *En Banc* sustained the ruling of the CTA Division that in the absence of a termination letter, it cannot be established that Asiatrust validly availed of the Tax Abatement Program.[42] As to the Certification issued by the BIR, the CTA *En Banc* noted that it only covers the fiscal year ending June 30, 1996.[43] As to the letter issued by RDO Nacar and the various BIR Tax Payment Deposit Slips, the CTA *En Banc* pointed out that these have no probative value because these were not authenticated nor formally offered in evidence and are mere photocopies of the purported documents.[44]

On April 16, 2012, the CTA *En Banc* denied the motions for partial reconsideration of the CIR and Asiatrust.[45]

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[38] *Id*. at 1133-1135.

[39] *Id*. at 1135.

[40] *Rollo* (G.R. No. 201530), pp. 43-45.

[41] *Id*. at 50.

[42] *Id*. at 49-50.

[43] *Id*. at 46.

[44] *Id*. at 46-47.

[45] *Id*. at 74.

Issues

Hence, the instant consolidated Petitions under Rule 45 of the Rules of Court, with the following issues:

G.R. No. 201530

I.

WHETHER X X X THE [CTA] *EN BANC* ERRED IN FINDING THAT [ASIATRUST] IS LIABLE FOR DEFICIENCY FINAL WITHHOLDING TAX FOR FISCAL YEAR ENDING JUNE 30, 1998.

II.

WHETHER X X X THE ORDER OF THE [CTA] *EN BANC* FOR PETITIONER TO PAY AGAIN THE FINAL WITHHOLDING TAX FOR FISCAL YEAR ENDING JUNE 30, 1998 WOULD AMOUNT TO DOUBLE TAXATION.

III.

WHETHER X X X THE [CTA] *EN BANC* ERRED IN RESOLVING THE ISSUE OF ALLEGED DEFICIENCY FINAL WITHHOLDING TAX FOR FISCAL YEAR ENDING JUNE 30, 1998 BASED ON MERE TECHNICALITIES.[46]

G.R. Nos. 201680-81

I.

WHETHER X X X THE [CTA] *EN BANC* COMMITTED REVERSIBLE ERROR WHEN IT DISMISSED [THE CIR'S] PETITION FOR REVIEW ON THE GROUND THAT THE LATTER ALLEGEDLY FAILED TO COMPLY WITH SECTION 1, RULE 8 OF THE REVISED RULES OF THE [CTA].

II.

WHETHER X X X THE [CTA] *EN BANC* COMMITTED REVERSIBLE ERROR WHEN IT SUSTAINED THE AMENDED DECISION DATED 16 MARCH 2010 OF THE FIRST DIVISION DECLARING CLOSED AND TERMINATED RESPONDENT'S

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[46] *Id*. at 10.

LIABILITY FOR DEFICIENCY DOCUMENTARY STAMP TAX FOR TAXABLE YEARS 1997 AND 1998.[47]

G.R. No. 201530

Asiatrust's Arguments

Asiatrust contends that the CTA *En Banc* erred in affirming the assessment for deficiency final withholding tax for fiscal year ending June 30, 1998 considering that it already availed of the Tax Abatement Program as evidenced by the Certification issued by the BIR, the letter issued by RDO Nacar, and the BIR Tax Payment Deposit Slips.[48] Asiatrust maintains that the BIR Certification is sufficient proof of its availment of the Tax Abatement Program considering the CIR's unjustifiable refusal to issue a termination letter.[49] And although the letter and the BIR Tax Payment Deposit Slips were not formally offered in evidence, Asiatrust insists that the CTA *En Banc* should have relaxed the rules as the Supreme Court in several cases has relaxed procedural rules in the interest of substantial justice.[50] Moreover, Asiatrust posits that since it already paid the basic taxes, the affirmance of the deficiency final withholding tax assessment for fiscal year ending June 30, 1998 would constitute double taxation as Asiatrust would be made to pay the basic tax twice.[51]

The CIR's Arguments

The CIR, however, points out that the BIR Certification relied upon by Asiatrust does not cover fiscal year ending June 30, 1998.[52] And even if the letter issued by RDO Nacar and the BIR Tax Payment Deposit Slips were admitted in evidence,

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[47] *Rollo* (G.R. Nos. 201680-81), pp. 132-133.

[48] *Id.* (G.R. No. 201530), pp. 365-375.

[49] *Id.* at 370-372.

[50] *Id.* at 366-370.

[51] *Id.* at 372-374.

[52] *Id.* at 419-420.

the result would still be the same as these are not sufficient to prove that Asiatrust validly availed of the Tax Abatement Program.[53]

G.R. Nos. 201680-81

The CIR's Arguments

The CIR contends that the CTA *En Banc* erred in dismissing his appeal for failing to file a motion for reconsideration on the Amended Decision as a perusal of the Amended Decision shows that it is a mere resolution, modifying the original Decision.[54]

Furthermore, the CIR claims that Asiatrust is not entitled to a tax amnesty because it failed to submit its income tax returns (ITRs).[55] The CIR likewise imputes bad faith on the part of Asiatrust in belatedly submitting the documents before the CTA Division.[56]

Asiatrust's Arguments

Asiatrust on the other hand argues that the CTA *En Banc* correctly dismissed the CIR's appeal for failure to file a motion for reconsideration on the Amended Decision.[57] It asserts that an amended decision is not a mere resolution but a new decision.[58]

Asiatrust insists that the CIR can no longer assail the Amended Decision of the CTA Division before the Court considering the dismissal of his appeal for failing to file a motion for reconsideration on the Amended Decision.[59] In any case,

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[53] *Id*. at 423-427.

[54] *Id*. at 409.

[55] *Id*. at 411-414.

[56] *Id*. at 414-419.

[57] *Id*. at 379-383.

[58] *Id*. at 383-384.

[59] *Id*. at 390.

Asiatrust claims that the submission of its ITRs is not required as the Tax Amnesty Law only requires the submission of a SALN as of December 31, 2005.[60] As to its belated submission of the documents, Asiatrust contends that recent jurisprudence allows the presentation of evidence before the CTA *En Banc* even after trial.[61] Thus, it follows that the presentation of evidence before the CTA Division should likewise be allowed.[62]

Our Ruling

The Petitions lack merit.

G.R. No. 201530

An application for tax abatement is considered approved only upon the issuance of a termination letter.

Section 204(B)[63] of the 1997 National Internal Revenue Code (NIRC) empowers the CIR to abate or cancel a tax liability.

On September 27, 2006, the BIR issued RR No. 15-06 prescribing the guidelines on the implementation of the one-time administrative abatement of all penalties/surcharges and interest on delinquent accounts and assessments (preliminary

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[60] *Id*. at 386-387.

[61] *Id*. at 388-390.

[62] *Id*.

[63] ***SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** – x x x

(B) Abate or cancel a tax liability, when:

(1) The tax or any portion thereof appears to be unjustly or excessively assessed; or

(2) The administration and collection costs involved do not justify the collection of the amount due.

All criminal violations may be compromised except: (a) those already filed in court, or (b) those involving fraud.

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or final, disputed or not) as of June 30, 2006. Section 4 of RR No. 15-06 provides:

> SECTION 4. *Who May Avail.* — Any person/ taxpayer, natural or juridical, may settle thru this abatement program any delinquent account or assessment which has been released as of June 30, 2006, by paying an amount equal to One Hundred Percent (100%) of the Basic Tax assessed with the Accredited Agent Bank (AAB) of the Revenue District Office (RDO)/Large Taxpayers Service (LTS)/Large Taxpayers District Office (LTDO) that has jurisdiction over the taxpayer. In the absence of an AAB, payment may be made with the Revenue Collection Officer/Deputized Treasurer of the RDO that has jurisdiction over the taxpayer. After payment of the basic tax, the assessment for penalties/surcharge and interest shall be cancelled by the concerned BIR Office following existing rules and procedures. Thereafter, the docket of the case shall be forwarded to the Office of the Commissioner, thru the Deputy Commissioner for Operations Group, for issuance of Termination Letter.

Based on the guidelines, the last step in the tax abatement process is the issuance of the termination letter. The presentation of the termination letter is essential as it proves that the taxpayer's application for tax abatement has been approved. Thus, without a termination letter, a tax assessment cannot be considered closed and terminated.

In this case, Asiatrust failed to present a termination letter from the BIR. Instead, it presented a Certification issued by the BIR to prove that it availed of the Tax Abatement Program and paid the basic tax. It also attached copies of its BIR Tax Payment Deposit Slips and a letter issued by RDO Nacar. These documents, however, do not prove that Asiatrust's application for tax abatement has been approved. If at all, these documents only prove Asiatrust's payment of basic taxes, which is not a ground to consider its deficiency tax assessment closed and terminated.

Since no termination letter has been issued by the BIR, there is no reason for the Court to consider as closed and terminated the tax assessment on Asiatrust's final withholding tax for fiscal year ending June 30, 1998. Asiatrust's application for tax abatement will be deemed approved only upon the issuance of a termination letter, and only then will the deficiency tax

assessment be considered closed and terminated. However, in case Asiatrust's application for tax abatement is denied, any payment made by it would be applied to its outstanding tax liability. For this reason, Asiatrust's allegation of double taxation must also fail.

Thus, the Court finds no error on the part of the CTA *En Banc* in affirming the said tax assessment.

G.R. Nos. 201680-81

An appeal to the CTA En Banc must be preceded by the filing of a timely motion for reconsideration or new trial with the CTA Division.

Section 1, Rule 8 of the Revised Rules of the CTA states:

> SECTION 1. *Review of cases in the Court en banc.* — In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

Thus, in order for the CTA *En Banc* to take cognizance of an appeal *via* a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word "must" indicates that the filing of a prior motion is mandatory, and not merely directory.[64]

The same is true in the case of an amended decision. Section 3, Rule 14 of the same rules defines an amended decision as "[a]ny action modifying or reversing a decision of the Court *en banc* or in Division." As explained in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue,*[65]

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[64] *Commissioner of Customs v. Marina Sales, Inc.,* 650 Phil. 143, 151-152 (2010).

[65] G.R. Nos. 200841-42, August 26, 2015, 768 SCRA 269, 275.

an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration.

In this case, the CIR's failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of its Petition for Review before the CTA *En Banc*. Thus, the CTA *En Banc* did not err in denying the CIR's appeal on procedural grounds.

Due to this procedural lapse, the Amended Decision has attained finality insofar as the CIR is concerned. The CIR, therefore, may no longer question the merits of the case before this Court. Accordingly, there is no reason for the Court to discuss the other issues raised by the CIR.

As the Court has often held, procedural rules exist to be followed, not to be trifled with, and thus, may be relaxed only for the most persuasive reasons.[66]

WHEREFORE, the Petitions are hereby **DENIED**. The assailed November 16, 2011 Decision and the April 16, 2012 Resolution of the Court of Tax Appeals *En Banc* in CTA EB Case Nos. 614 and 677 are hereby **AFFIRMED**, without prejudice to the action of the Bureau of Internal Revenue on Asiatrust Development Bank, Inc.'s application for abatement. The Bureau of Internal Revenue is **DIRECTED** to act on Asiatrust Development Bank, Inc.'s application for abatement in view of Section 5, Revenue Regulations No. 13-2001.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

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[66] *Commissioner of Customs v. Marina Sales, Inc., supra* at 152.

FIRST DIVISION

[G.R. No. 202573. April 19, 2017]

BANKARD, INC.,* *petitioner, vs.* **LUZ P. ALARTE,** *respondent.*

SYLLABUS

CIVIL LAW; SPECIAL CONTRACTS; LOAN; CREDIT CARD ARRANGEMENTS ARE SIMPLE LOAN ARRANGEMENTS; VALIDITY OF CLAIM THEREIN MUST BE PROVED.— [For failure to pay her credit card obligations,] petitioner [bank] filed a collection case against respondent x x x before the Metropolitan Trial Court of Pasig City (MeTC). x x x [T]he MeTC issued its Decision dismissing the case. x x x [This was affirmed by the Regional Trial Court (RTC) and the Court of Appeals.] x x x The Court notes that all throughout the proceedings, respondent did not participate. x x x [P]etitioner declared that it is submitting the instant case for resolution on the basis of the pleadings on record. x x x The Petition is partially granted. x x x Petitioner's fault appears to lie in the fact that its Complaint was not well-prepared, and its cause is not well-argued; for this reason, the courts below misunderstood both. x x x Thus, it would not hurt the cause of justice to remand the case to the MeTC where petitioner would be required to amend its Complaint and adduce additional evidence to prove its case; x x x it is not enough as to allow judgment in its favor on the basis of extant evidence. It must prove the validity of its claim; this it may do by amending its Complaint and adducing additional evidence of respondent's credit history and proving the loan transactions between them. After all, credit card arrangements are simple loan arrangements between the card issuer and the card holder.

APPEARANCES OF COUNSEL

Cortel Law Office for petitioner.

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* now RCBC Bankard Services Corporation.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the September 28, 2011 Decision[2] of the Court of Appeals (CA) denying the Petition for Review in CA-G.R. SP No. 114345, and its July 4, 2012 Resolution[3] denying herein petitioner's Motion for Reconsideration[4] in said case.

Factual Antecedents

Petitioner Bankard, Inc. (Bankard, now RCBC Bankard Services Corporation) is a duly constituted domestic corporation doing business as a credit card provider, extending credit accommodations to its member-cardholders for the purchase of goods and services obtained from Bankard-accredited business establishments, to be paid later on by the member-cardholders following billing.

In 2007, petitioner filed a collection case against respondent Luz P. Alarte before the Metropolitan Trial Court of Pasig City (MeTC). The case was docketed as Civil Case No. 13956 and ultimately assigned to Branch 72. In its Complaint,[5] petitioner alleged that respondent applied for and was granted credit accommodations under Bankard myDream JCB Card No. 3562-8688-5155-1006; that respondent, using the said Bankard myDream JCB credit card, availed herself of credit accommodations by "purchasing various products";[6] that per Statement of Account[7] dated July 9, 2006, respondent's credit

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[1] *Rollo*, pp. 9-21.

[2] *Id*. at 23-27; penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Jose C. Reyes, Jr. and Antonio L. Villamor.

[3] *Id*. at 30-32.

[4] *Id*. at 91-96.

[5] *Id*. at 38-45.

[6] *Id*. at 38.

[7] *Id*. at 42.

availments amounted to a total of ₱67,944.82, inclusive of unbilled monthly installments, charges and penalties or at least the minimum amount due under the credit card; and that respondent failed and refuses to pay her obligations despite her receipt of a written demand.[8] Thus, it prayed that respondent be ordered to pay the amount of ₱67,944.82, with interest, attorney's fees equivalent to 25% of the sum due, and costs of suit.

Despite service of summons, respondent failed to file her answer. For this reason, petitioner filed a Motion to Render Judgment[9] which was granted.

Ruling of the Metropolitan Trial Court

On July 15, 2009, the MeTC issued its Decision[10] dismissing the case, thus:

> Inasmuch as this case falls under the Rule on Summary Procedure, judgment shall be rendered as may be warranted by the facts alleged in the complaint and limited to what was prayed for.
>
> For decision is whether x x x plaintiff is entitled to its claims against herein defendant.
>
> It bears stressing that in civil cases, the party having the burden of proof must establish his case by preponderance of evidence. As mentioned in the case of Amoroso vs. Alegre (G.R. No. 142766, June 15, 2007), "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." If plaintiff claims a right granted or created by law, he must prove his claim by competent evidence. He must rely on the strength of his own evidence and not upon the weakness of that of his opponent.
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> Scrutiny of the pieces of evidence submitted by plaintiff, particularly the single statement of account dated July 7[,] 2006, discloses that

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[8] *Id.* at 43.

[9] *Id*. at 48-49.

[10] *Id*. at 50-51; penned by Presiding Judge Joy N. Casihan-Dumlao.

what were merely reflected therein are the amounts imposed as late charges and interest charges. Nothing in the said document would indicate the alleged purchases made by defendant. Considering that there is sans [sic] of evidence showing that defendant made use [sic] plaintiff's credit facilities, it could no [sic] be said then that the amount of ₱67,944.82 alleged to be defendant's outstanding balance was the result of the latter's availment of plaintiff's credit card.

WHEREFORE, judgment is hereby rendered, DISMISSING herein complaint for lack of preponderance of evidence.

SO ORDERED.[11]

Ruling of the Regional Trial Court

Petitioner appealed before the Regional Trial Court (RTC) which, in a May 6, 2010 Decision,[12] affirmed the MeTC. It held:

In essence, Appellant argued that the Lower Court erred in dismissing the case on the ground of insufficiency of evidence. Accordingly, the evidence presented by Appellant is enough to pass the requirement of preponderance of evidence based on the disputable presumption enunciated under Rule 131, Section 3 (q) of the Revised Rules of Court. Appellant added that the account of the defendant-appellee Luz Alarte x x x could not have incurred penalties and interest charges if no purchases were made thereon. That likewise, Appellee was deemed to have admitted her obligation when she did not object to the amounts stated on the statement of accounts sent by the Appellant in the regular course of its business and as well, upon receiving the demand letter dated 03 October 2007 for the payment of Php 67,944.82.

A careful review of the Decision appealed from reveals that there really was no clear proof on how the amount claimed by the Appellant was incurred by the Appellee. This is so because if ever, the disputable presumption under the Rule only showed to the Court that the statement of accounts were indeed sent by the Appellant to the Appellee on a "regular basis" but not the details itself of the purchase transactions showing the fact that Appellee made use of the Appellant's credit

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[11] *Id*.

[12] *Id.* at 64-65; Decision in Civil Case No. 72180 penned by Judge Rolando G. Mislang of the Pasig City RTC, Branch 167.

facilities up to the amount claimed together with the imposition of unconscionable interest and penalties as basis for the grant thereof. In short, the presumed existence of the statement of accounts cannot be considered as repository of the truth of the facts stated in the single statement of account dated 07 July 2006 presented by the Appellant considering that only the presentation of the detailed purchase transactions had by the Appellee in using the credit card facilities of the Appellant can show that the amount claimed by the latter was actually incurred by the former.

Appellant further argued that the Lower Court should have issued an order setting a clarificatory hearing to establish the principal amount due and required the plaintiff to submit affidavits on that matter pursuant to Section 10 of the Rules on Summary Procedure.

Section 10 of the Revised Rules of Summary Procedure speaks of matters that requires [sic] clarification in the affidavits and position papers which the Court might require the parties through an order, [sic] it does not in any way speak of the appreciation of evidence by the Court as subject matter for clarificatory hearing. Be that as it may, the Order of the Lower Court dated 29 April 2009 was enough in giving the Appellant the opportunity to submit supporting details of the monthly statement to prove its case.

WHEREFORE, premises considered, finding no reversible error on [sic] the Decision of the Court a quo, being supported by substantial evidence as basis thereof, the same is hereby AFFIRMED in toto. Costs against the Plaintiff-Appellant.

SO ORDERED.[13]

Ruling of the Court of Appeals

Petitioner filed a Petition for Review[14] before the CA docketed as CA-G.R. SP No. 114345. In a September 28, 2011 Decision, however, the CA affirmed the Decisions of the MeTC and RTC. It held:

Petitioner posits that the RTC erred in sustaining the [MeTC] in dismissing the case for lack of evidence since it was able to prove its claim by preponderance of evidence.

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[13] *Id.*

[14] *Id.* at 56-72.

Section 1, Rule 133 of the Revised Rules of Court provides:

> 'SECTION 1. *Preponderance of evidence, how determined*. – In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, x x x.'

Based on the facts and circumstances in this case, there is indeed no basis for the claim. As aptly observed by the RTC, there was no clear proof on how the amount claimed by petitioner was incurred by respondent, thus:

> 'x x x x x x x x x
>
> A careful review of the Decision appealed from reveals that there really was no clear proof on how the amount claimed by the Appellant was incurred by the appellee. This is so because if ever, the disputable presumption under the Rule only showed to the Court that the statement of accounts were indeed sent by the Appellant to the Appellee on a 'regular basis' but not the details itself of the purchase transactions showing the fact that Appellee made use of the Appellant's credit facilities up to the amount claimed together with the imposition of unconscionable interest and penalties as basis for the grant thereof. In short, the presumed existence of the statement of accounts cannot be considered as repository of the truth of the facts stated in the single statement of account dated 07 July 2006 presented by the Appellant considering that only the presentation of the detailed purchase transactions had by the Appellee in using the credit card facilities of the Appellant can show that the amount claimed by the latter was actually incurred by the former.
>
> x x x x x x x x x'

Burden of proof is the duty of a party to present evidence to establish his claim or defense by the amount of evidence required by law, which is preponderance of evidence in civil cases. As a rule, he who alleges the affirmative of the issue has the burden of proof. Here, the burden of proof lies with the petitioner. As such, it has the obligation to present such quantum of evidence necessary to prove

its claim. Unfortunately, the petitioner not only failed to overturn this burden but also failed to adduced [sic] the evidence required to prove such claim. While it may be true that respondent applied for and was granted a credit accommodation by petitioner, the latter failed to adduce enough evidence to establish that it is entitled to the payment of the amount of Php67,944.82. The Statement of Account submitted by petitioner showing the alleged obligation of the respondent merely states the late charges and penalty incurred but did not enumerate the alleged purchases/transactions made by the respondent while using the credit card issued by the petitioner. Thus, having failed to establish its claim by preponderance of evidence, the dismissal of the petition is warranted.

WHEREFORE, premises considered, the petition under consideration is DISMISSED and the assailed Decision dated May 06, 2010 of Regional Trial Court of Pasig, Branch 167 is hereby AFFIRMED.

SO ORDERED.[15]

Petitioner moved to reconsider, but in a July 4, 2012 Resolution, the CA held its ground. Hence, the present Petition.

The Court notes that all throughout the proceedings, respondent did not participate. She did not file her answer in the MeTC. Nor did she file any comment or position paper in the RTC appeal, as well as the CA petition for review. Just as well, she failed to submit her Comment to the instant Petition for which reason fine was imposed upon her by the Court on two occasions. And in an August 27, 2015 Manifestation,[16] petitioner declared that it is submitting the instant case for resolution on the basis of the pleadings on record.

Issue and Arguments

Petitioner simply submits that it has presented sufficient evidence to support its pecuniary claim. It claims that the July 9,

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[15] *Id.* at 25-26.

[16] *Id.* at 120-121.

2006 Statement of Account[17] properly reflected the respondent's obligation; that respondent is estopped from questioning the said statement of account as it contains a waiver, stating that if respondent does not question the same within 20 days from receipt, "Bankard, Inc. will deem the Statement true and correct";[18] that respondent's failure to file her Answer in the MeTC and Comment before the RTC and the CA likewise results in the validation of the statement of account; that with her failure to answer, all the material allegations in the Complaint are deemed admitted, especially the statement of account which should have been specifically denied under oath; that if judgment is not rendered in its favor, this would result in the unjust enrichment of respondent at its expense; and that if the MeTC, RTC, and CA are affirmed, this would result in a situation where credit card holders could evade their obligations by simply ignoring cases filed against them, as in this case where, despite proper notice, respondent failed and refused to file her Answer to the Complaint, her respective comments to the RTC appeal, CA petition, and the instant Petition.

Petitioner thus prays that the questioned CA dispositions be reversed and set aside, and that judgment be rendered granting its prayer as stated in its Complaint, that is, that respondent be ordered to pay the amount of ₱67,944.82, with interest; attorney's fees equivalent to 25% of the sum due; and costs of suit.

Our Ruling

The Petition is partially granted.

A perusal of the July 9, 2006 Statement of Account sent to respondent would indeed show that it does not contain the particulars of purchase transactions entered into by the latter; it merely contains the following information:

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[17] Records, p. 5.

[18] *Rollo*, p. 13.

PREVIOUS STATEMENT BALANCE			**[₱]64,615.64**
3562-8688-5155-1006 LUZ TATEL ALARTE			
07/04/06	07/047/0	LATE CHARGES	1,484.84
07/07/06	07/07/06	INTEREST CHARGES	1,844.34
		SUB TOTAL	3,329.18
		BALANCE END	**[₱]67,944.82**

*** END OF STATEMENT – PAGE 1 ***[19]

However, the manner in which the statement of account is worded indicates that it is a running balance, a continuing and mounting bill of charges consisting of a combined principal amount with finance and penalty charges imposed, which respondent appears to have failed to pay in the past. This is shown by the fact that respondent has failed to pay a past bill amounting to ₱64,615.64 – the "previous statement balance" in the very first line of the above-quoted statement of account. This could mean that there really were no immediate purchase transactions made by respondent for the month that needed to be specified in the July 9, 2006 Statement of Account; that instead, she simply repeatedly failed and continues to fail to pay her credit card debt arising out of past credit card purchase transactions to petitioner, which thus resulted in a mounting pile of charges imposed upon her outstanding account as reflected in a statement or bill of charges or accounts regularly sent to her.

Petitioner's fault appears to lie in the fact that its Complaint was not well-prepared, and its cause is not well-argued; for this reason, the courts below misunderstood both. Upon being apprised of the MeTC's Decision dismissing the case for failure to "indicate the alleged purchases made by"[20] respondent, petitioner could have simply included in its RTC appeal a simple summary of respondent's account; the source of her debt, such as the credit card transactions she made in the past and, her past statements of account to prove that the July 9, 2006 statement of account was merely a running or accumulated balance and did not necessarily involve immediate credit card purchases.

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[19] Records, p. 5.

[20] *Rollo*, p. 51.

Instead, petitioner made the mistake of laying blame upon the MeTC and RTC for not conducting a clarificatory hearing and for not requiring it to submit affidavits "on that matter",[21] when enlightenment should have come primarily from it as it is precisely engaged in the credit card business and is therefore presumed to be an expert on the subject.

While it can be said that, from the point of view of petitioner's business dealings with respondent, the former is not obliged, *each and every time*, to send a statement of account to the latter containing a detailed list of all the credit card transactions she made in the past which remain unsettled and outstanding as of the date of issuance of the latest statement of account, as she is presumed to know these from past statements of account received. The matter, however, is not so simple from the viewpoint of someone who is not privy to their transactions, such as the courts.

This Court cannot completely blame the MeTC, RTC, and CA for their failure to understand or realize the fact that a monthly credit card statement of account does not always necessarily involve purchases or transactions made immediately prior to the issuance of such statement; certainly, it may be that the card holder did not at all use the credit card for the month, and the statement of account sent to him or her refers to principal, interest, and penalty charges incurred from past transactions which are too multiple or cumbersome to enumerate but nonetheless remain unsettled by the card holder. This Court cannot judge them for their lack of experience or practical understanding of credit card arrangements, although it would have helped if they just endeavored to derive such an understanding of the process.

Thus, it would not hurt the cause of justice to remand the case to the MeTC where petitioner would be required to amend its Complaint and adduce additional evidence to prove its case; that way, the lower court can better understand the nature of

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[21] *Id.* at 69.

the claim, and this time it may arrive at a just resolution of the case. This is to say that while the Court believes that petitioner's claim may be well-founded, it is not enough as to allow judgment in its favor on the basis of extant evidence. It must prove the validity of its claim; this it may do by amending its Complaint and adducing additional evidence of respondent's credit history and proving the loan transactions between them. After all, credit card arrangements are simple loan arrangements between the card issuer and the card holder.

> Simply put, every credit card transaction involves three contracts, namely: (a) the sales contract between the credit card holder and the merchant or the business establishment which accepted the credit card; (b) the loan agreement between the credit card issuer and the credit card holder; and lastly, (c) the promise to pay between the credit card issuer and the merchant or business establishment.[22]

WHEREFORE, the Petition is **PARTIALLY GRANTED**. The September 28, 2011 Decision and July 4, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 114345 are **REVERSED** and **SET ASIDE**. Civil Case No. 13956 is reinstated, and the Metropolitan Trial Court of Pasig City, Branch 72 is **ORDERED** to conduct further proceedings in accordance with the foregoing disquisition of the Court and allow petitioner Bankard, Inc. (now RCBC Bankard Services Corporation) to amend its Complaint and/or present additional evidence to prove its case.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

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[22] *Pantaleon v. American Express International, Inc.*, 643 Phil. 488, 503 (2010).

SECOND DIVISION

[G.R. No. 208215. April 19, 2017]

C.F. SHARP CREW MANAGEMENT, INC., NORWEGIAN CRUISE LINE, LTD. and/or MR. JUAN JOSE ROCHA, *petitioners, vs.* **RHUDEL A. CASTILLO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; THE 2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; FOR DISABILITY TO BE COMPENSABLE, THE SEAFARER MUST ESTABLISH THAT HIS ILLNESS OR INJURY HAS RENDERED HIM PERMANENTLY OR PARTIALLY DISABLED AND THAT THERE IS A CAUSAL CONNECTION BETWEEN HIS ILLNESS OR INJURY AND THE WORK FOR WHICH HE HAD BEEN CONTRACTED.— Considering that respondent was hired in 2008, the 2000 POEA-SEC applies. x x x The illness of respondent, cavernoma, is not included in the list of occupational diseases under Section 32-A of the POEA-SEC. However, Section 20(B)(4) of the contract provides that those illnesses not listed in Section 32 are disputably presumed as work-related. In interpreting the aforesaid definition, this Court has held that for disability to be compensable under Section 20(B) of the 2000 POEA-SEC, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted. In determining the work-causation of a seafarer's illness, the diagnosis of the company-designated physician bears vital significance. After all, it is before him that the seafarer must initially report to upon medical repatriation.

2. ID.; ID.; ID.; THIRD-DOCTOR REFERRAL PROVISION; THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN PREVAILS IN CASES WHERE THE

SEAFARER DID NOT OBSERVE THE THIRD-DOCTOR REFERRAL PROVISION BUT IF THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN ARE CLEARLY BIASED IN FAVOR OF THE EMPLOYER, THE COURTS MAY GIVE GREATER WEIGHT TO THE FINDINGS OF THE SEAFARER'S PERSONAL PHYSICIAN.— The conflicting findings of the company's doctor and the seafarer's physician often stir suits for disability compensation. As an extrajudicial measure of settling their differences, the POEA-SEC gives the parties the option of agreeing jointly on a third doctor whose assessment shall break the impasse and shall be the final and binding diagnosis. The POEA-SEC provides for a procedure to resolve the conflicting findings of a company-designated physician and personal physician x x x. In the instant case, respondent did not seek the opinion of a third doctor. Based on jurisprudence, the findings of the company-designated physician prevail in cases where the seafarer did not observe the third-doctor referral provision in the POEA-SEC. However, if the findings of the company-designated physician are clearly biased in favor of the employer, then courts may give greater weight to the findings of the seafarer's personal physician. Clear bias on the part of the company-designated physician may be shown if there is no scientific relation between the diagnosis and the symptoms felt by the seafarer, or if the final assessment of the company designated physician is not supported by the medical records of the seafarer.

3. **ID.; ID.; PRE-EMPLOYMENT MEDICAL EXAMINATION; MERELY DETERMINES WHETHER ONE IS FIT TO WORK AT SEA OR FIT FOR SEA SERVICE AND CANNOT BE RELIED UPON TO ARRIVE AT A SEAFARER'S TRUE STATE OF HEALTH.—** We have ruled that in the past the PEME is not exploratory in nature. It was not intended to be a totally in-depth and thorough examination of an applicant's medical condition. The PEME merely determines whether one is fit to work at sea or fit for sea service; it does not state the real state of health of an applicant. In short, the fit to work declaration in the seafarer's PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment. x x x [A] PEME x x x cannot be relied upon to arrive at a seafarer's true state of health. While a PEME may reveal enough for the company to decide whether a seafarer

is fit for overseas employment, it may not be relied upon to inform the company of a seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory. It was only after respondent was subjected to extensive medical procedures including MRI that respondent's illness was finally diagnosed as a case of cavernoma. For respondent to, thus, claim that the issuance of a clean bill of health to a seafarer after a PEME means that his illness was acquired during the seafarer's employment is a *non sequitur*.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Bantog And Andaya Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court which seeks to annul and set aside the Decision[2] dated February 12, 2013 and the Resolution[3] dated July 10, 2013 of the Court of Appeals (*CA*) in CA-G.R. SP No. 120043 reversing the Decision[4] dated January 25, 2011 of the National Labor Relations Commission (*NLRC*), First Division, in NLRC LAC Case No. OFW(L)-10-000850-10 affirming the Decision[5] of the Labor Arbiter dated September 6, 2010 which dismissed the respondent's complaint to recover permanent disability benefits.

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[1] *Rollo,* pp. 29-56.

[2] Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Rebecca L. De Guia-Salvador and Apolinario D. Bruselas, Jr., concurring; *id.* at 66-75.

[3] *Rollo*, p. 77.

[4] *Id.* at 103-114.

[5] *Id.* at 242-250.

The factual antecedents are as follows:

On June 6, 2008, respondent was hired by petitioner C.F. Sharp Crew Management on behalf of its foreign principal, petitioner Norwegian Cruise Line, Ltd., to serve as Security Guard on board the vessel MV Norwegian Sun under the Contract of Employment[6] of even date. The POEA-approved contract was for a period of ten (10) months, with a basic monthly salary of US$559.00.

On June 16, 2008, respondent boarded the ship MV Norwegian Sun.[7] Prior to his deployment, respondent underwent a Pre-employment Medical Examination (*PEME*) and was pronounced fit to work.[8] While on board the vessel, respondent suffered from difficulty of breathing and had a brief seizure attack causing him to fall from his bed. He was immediately treated by the ship doctor.[9]

When the ship docked at the port of Mazatlan, Sinaloa, Mexico, respondent was brought to a hospital where he was immediately admitted. He was confined at the hospital from September 24, 2008 to October 5, 2008 as evidenced by the medical reports[10] issued by Dr. Jesus Aguilar of Hospital Clinica Siglo XXI in Mazatlan, Mexico. It was found that respondent was suffering from "right parietal hemorrhage" of the brain and was given medications to prevent seizures.

Respondent was repatriated on October 7, 2008. He was referred to the company-designated physicians, Dr. Susannah Ong-Salvador (*Dr. Ong-Salvador*) and Dr. Antonio A. Pobre (*Dr. Pobre*), at Comprehensive Marine Medical Services for further treatment, evaluation and management. He underwent

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[6] *Id.* at 187.

[7] *Id.* at 164.

[8] *Id.* at 133.

[9] *Id.* at 164, 188.

[10] *Id.* at 189-198.

a magnetic resonance imaging (*MRI*) on October 20, 2008[11] with the following findings: "T1 and T2 weighted hyperdensity over cortico-white matter junction of the right parietal lobe."

After a series of examinations, respondent was initially diagnosed as suffering from "arterio-venous malformation, right parietal" and was found to have "intracerebral hemorrhage over the superior parietal at right due to small arterio venous malformation or angioma."[12]

On December 16, 2008, respondent was admitted at the Ramon Magsaysay Memorial Medical Center where he underwent a "4-Vesssel Carotid Angiogram" at petitioners' expense. The result revealed that there was a "small local venous channel or venous pooling in the right anterior parietal lobe[13]of respondent's brain. He was then referred to a neurosurgeon, Dr. Alfred Tan, for further medical treatment and management.

Subsequently, two (2) follow-up reports were issued by Dr. Pobre on January 9, 2009[14] and February 9, 2009[15] wherein it was stated that Dr. Alfred Tan explained to him that surgery is suggested to be performed on the respondent to prevent recurrent "intracerebral hemorrhage." Respondent made follow-up visits on March 9, 2009[16] and March 17, 2009[17] as shown in the follow-up reports of Dr. Pobre of even dates.

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[11] Per medical report dated October 22, 2008 issued by Dr. Susannah Ong-Salvador, *id.* at 202.

[12] Per medical reports dated November 5, 2008 and December 3, 2008 issued by Dr. Antonio A. Pobre, *id.* at 203-204.

[13] Per medical report dated December 17, 2008 issued by Dr. Antonio A. Pobre, Medical Coordinator of Comprehensive Medical Marine Services, *id.* at 205.

[14] *Rollo,* p. 206.

[15] *Id.* at 207.

[16] *Id,* at 208.

[17] *Id.* at 209.

On April 16, 2009, a Medical Progress Report[18] was issued by Dr. Ong-Salvador stating that respondent is suffering from "right parietal cavernoma" and the condition is deemed to be idiopathic, thus, it is not work-related. A recommendation was, likewise, made for respondent to undergo a Steriotactic Radiosurgery or an Open Surgery to prevent further seizure attacks.

On April 30, 2009, Dr. Pobre issued a Certification[19] indicating that respondent is suffering from *Cavernoma* and the illness is a congenital disorder and not work-related.

Petitioners shouldered all the expenses in connection with respondent's medical treatment. Respondent was, likewise, paid his sickness wages as evidenced by the receipts duly signed by respondent for the period from September 25, 2008 to April 30, 2009.[20]

On December 16, 2009, respondent filed a Complaint[21] for permanent and total disability benefits, damages and attorney's fees. Respondent alleged that he is entitled to a maximum disability compensation of US$120,000.00 under the Norwegian Collective Bargaining Agreement (*CBA*). Respondent further alleged that even after all the examinations, he is still suffering from the illnesses and is disabled up to the present.[22]

On September 6, 2010, Labor Arbiter (*LA*) Elias H. Salinas dismissed the complaint. The LA opined that while the illness of respondent is disputably presumed to be work-related, petitioners have substantially disputed the presumption of work-connection with the submission of a certification from the company physicians categorically stating that respondent's illness is idiopathic and congenital in etiology, and as such, could not

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[18] *Id.* at 201.

[19] *Id.* at 199-200.

[20] *Id.* at 212-216.

[21] *Id.* at 126-128.

[22] *Id.* at 243.

have been caused by working conditions aboard the vessel. Also, the LA noted that no copy of the alleged Norwegian CBA was shown by respondent.

Moreover, as opposed to the unequivocal declaration of the company-designated physicians, the LA stated that respondent did not submit any evidence or certification that his illness is work-related or work-aggravated. The LA ratiocinated that the fact that the illness may have manifested during the period of respondent's contract is inadequate to justify the grant of disability compensation. The POEA[23]-SEC mandates that the causal connection between the illness and nature of work performed should also be proven. The dispositive portion of the Decision states:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaint for lack of merit.
>
> SO ORDERED.[24]

Thereafter, respondent elevated the case before the NLRC. On January 25, 2011, the NLRC affirmed the Decision of the LA.

A motion for reconsideration was filed by respondent, but the same was denied by the NLRC on April 19, 2011.[25]

Aggrieved, respondent filed a petition for *certiorari* before the CA. In a Decision dated February 12, 2013, the CA reversed the Decision of the NLRC. The CA held that petitioners have not overcome the disputable presumption of work-relatedness of the disease due to the conflicting statements of the petitioners' physicians as to the cause of respondent's illness. The *fallo* of the Decision states:

> **WHEREFORE**, the petition is **GRANTED**. The assailed *25 January 2011 Decision and 19 April 2011 Resolution* of the National

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[23] Philippine Overseas Employment Administration.

[24] *Rollo,* p. 250.

[25] *Id.* at 116-117.

Labor Relations Commission are **REVERSED** and **SET ASIDE**. The private respondents are held jointly and severally liable to pay the petitioner permanent and total disability benefits of US$60,000.00 and attorney's fees of ten percent (10%) of the total monetary award, both at its peso equivalent at the time of actual payment.

SO ORDERED.[26]

A motion for reconsideration was filed by the petitioners which was denied by the CA in its Resolution dated July 10, 2013.

Hence, this petition raising the following errors:

I

THE HONORABLE COURT OF APPEALS PALPABLY ERRED IN GRANTING THE PETITION FOR CERTIORARI, IN THAT:

A. THE FINDINGS, DECISIONS AND RESOLUTIONS OF THE NLRC, AN ADMINISTRATIVE AGENCY DIVESTED WITH QUASI-JUDICIAL POWERS ARE GIVEN GREAT RESPECT BY THE HIGHER COURTS.

B. THE PRIVATE RESPONDENT'S *CAVERNOMA* IS NOT **WORK-RELATED.** THE SAID ILLNESS IS NOT INCLUDED IN THE LIST OF OCCUPATIONAL ILLNESSES IN THE POEA-SEC.

C. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT IGNORED THE SUPREME COURT'S PRONOUNCEMENT IN THE CASE OF **MAGSAYSAY V. CEDOL**[27] WHERE IT WAS CATEGORICALLY HELD THAT **THE BURDEN TO PROVE THAT AN ILLNESS IS WORK-RELATED BELONGS TO THE SEAFARER.**

D. THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT DID NOT CONSIDER THE COMPANY-DESIGNATED PHYSICIANS' CERTIFICATION STATING THAT THE SEAFARER'S *CAVERNOMA* IS NOT WORK-RELATED.

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[26] *Id.* at 56.

[27] 630 Phil. 352 (2010).

E. THE HONORABLE COURT OF APPEALS' AWARD OF PERMANENT/TOTAL DISABILITY BENEFITS SOLELY ON THE BASIS OF THE PETITIONER'S ALLEGATION THAT INCAPACITY FOR MORE THAN 120 DAYS HAS AUTOMATICALLY RENDERED HIM PERMANENTLY UNFIT FOR SEA DUTIES, IS **TOTALLY ERRONEOUS.**

II

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN AWARDING THE PETITIONER ATTORNEY'S FEES.[28]

Petitioners argued in their petition[29] that in order to overturn the opinion and findings of the company-designated physician, the opinion of respondent's physician must be supported by a third doctor's opinion without which, the company-designated physician's opinion shall prevail. They also argued that the burden to prove that an illness is work-related belongs to respondent. And considering that the illness is not work-related, the same is not compensable whether or not respondent is not able to work for more than 120 days.

Petitioners declared that respondent failed to establish by substantial evidence that his illness was caused by any risks to which he was exposed to while working as Security Guard on board the vessel. The only evidence that was presented to justify the work-relatedness of the illness is the mere statement by the personal doctor of respondent that the illness is work aggravated/related without any further explanation. Petitioners averred that that the disability of respondent was neither assessed by the company- designated physicians nor by his own doctor as having a disability grading of 1 for his illness, such that, respondent cannot be entitled to permanent total disability benefits.

In the Comment[30] of respondent, he stated that he was presumed fit at the time he entered into a contract with the

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[28] *Rollo*, pp. 36-37. (Emphasis in the original)

[29] *Id.* at 29-56.

[30] *Id.* at 419-428.

petitioners as revealed by the results of the PEME. He argued that he is entitled to total permanent disability benefits because he was found and declared as unfit to work by his private physician and that there is a disputable presumption that his illness is work-related. He also argued that he is considered total and permanently disabled as he was unable to work for more than 120 days.

The main issue for this Court's resolution is whether or not respondent is entitled to total and permanent disability benefits.

Entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, and the parties' CBA bind the seaman and his employer to each other.[31]

Considering that respondent was hired in 2008, the 2000 POEA-SEC applies. The 2000 POEA-SEC defines work-related illness as:

Definition of Terms:

12. Work-Related Illness - any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied.

The illness of respondent, cavernoma, is not included in the list of occupational diseases under Section 32-A of the POEA-SEC. However, Section 20(B)(4)[32] of the contract provides that

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[31] *Magsaysay Maritime Corporation v. Cedol, supra* note 27, at 362.

[32] Section 20. B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

those illnesses not listed in Section 32 are disputably presumed as work-related.

In interpreting the aforesaid definition, this Court has held that for disability to be compensable under Section 20(B) of the 2000 POEA-SEC, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.[33]

In determining the work-causation of a seafarer's illness, the diagnosis of the company-designated physician bears vital significance. After all, it is before him that the seafarer must initially report to upon medical repatriation.[34]

In the case at bar, petitioners' physician, Dr. Pobre, declared that the illness of respondent which is cavernova is not work-related as the same is congenital in nature, while petitioners' other physician Dr. Salvador-Ong declared the same as idiopathic in its causation and, thus, not work-related. The certification of Dr. Ong-Salvador dated April 16, 2009 states:

REPLY TO MEDICAL QUERY

This is in reference to your query regarding the case of Mr. Rhudel Castillo, 30 y/o, security with the working impression of Right parietal cavernoma.

Your query concerns whether his condition is deemed to be work-related or not.

Cavernoma is a brain tumor with a vascular origin. It is a dangerous condition as it may cause exacerbated brain hemorrhage and seizure episodes. There is no known risk factor as the condition is deemed to be idiopathic thus it is **non-work related**.[35]

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4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related. x x x

[33] *Maersk Filipinas Crewing Inc. v. Mesina,* 710 Phil. 531, 541-542. (2013).

[34] *Id*. at 544.

[35] *Rollo,* p. 199. (Emphasis in the original)

While the certification of Dr. Pobre dated April 30, 2009 provides:

ANSWER TO QUERY

This 30 yr old male SECURITY OFFICER from "NORWEGIAN SUN" alleged that he had a brief seizure attack causing him to fall from his bed landing at the right side of his face. When the ship docked at Mazatlan, Sinaloan, Mexico, he was confined in a hospital for a week where he was worked up. Finding was "Right Parietal Hemorrhage" as the cause of the seizure. He was discharged from the hospital and medically repatriated to the Philippines for further evaluation and management. Upon arrival in the Philippines, repeat MRI which showed "T1 and T2 weighted hyperdensity over the cortico-white matter junction of the right parietal lobe". An intracerebral hemorrhage over the superior parietal at the right could be due to small Arterio-Venous Malformation or angioma. The patient was admitted at Ramon Magsaysay Memorial Medical Center on December 16, 2008 under the service of Dr. Renato Carlos, a neuroradiologist. A 4-Vessel carotid Angiogram was done. Result: Small local venous channel or venous pooling in the right anterior parietal lobe. This may represent a portion of thrombosed venous angioma or venous pooling in a cavaernous hemangioma. The patient was referred to neurosurgeon, Dr. Alfred Tan, for further management. He explained that the surgery is indicated to prevent recurrent intracerebral hemorrage that could be fatal. However, the gammaknife surgery proposed is preventive in nature. Besides, he explained that the condition is NOT WORK-RELATED. Neurologist, Dr. Amado San Luis, said that illness is a congenital disorder.[36]

The CA found the two certifications conflicting, thus:

We, however, do not agree. We find public respondent NLRC's accession to the certification of company-designated physicians that petitioner Castillo's medical condition (Cavernoma) as "not work-related" resting on a quag of conflicting bases: Dr. Pobre declared it to be congenital in nature; whereas Dr. Salvador-Ong considered the same as idiopathic in its causation, that is, the cause is unknown. We are, thus, convinced in the finding of public respondent of "non-work-relatedness" based on the two physicians' certification, they

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[36] *Id.* at 200.

being conflicting, or the cause of the illness being uncertain; for what could be the basis therefor (of declaring the same not work-related)? Hence, the certification of the physicians being infirm and insubstantial, We cannot be in accordant with public respondent in having found the same to have overcome the disputable presumption of work-relatedness of the herein subject medical condition, Cavernoma, and resultantly dismissing the petitioner's appeal.

Having now presumed that the medical condition of petitioner Castillo is work-related, and his inability to perform his usual work due thereto was indisputably found to have extended beyond 120 days, We, therefore, regard his resulting disability to be total and permanent.[37]

Petitioners argue that there is no conflict on the findings of their two physicians. They stated that medical researchers have confirmed that the illness cavernoma may be congenital or present since birth as the same is genetically-related or may be inherited. At the same time, the development of the illness is spontaneous in nature, thus, idiopathic. However, according to petitioners, it cannot be denied that both the physicians are in unison in declaring that the respondent's illness is not work-related.

Petitioners' physicians differ in their view on the causation of respondent's illness, but both are one in declaring that the illness is not work-related, as opposed to the statement of respondent's physician Dr. Efren R. Vicaldo (*Dr. Vicaldo*) that the illness is work-related. The certification of Dr. Vicaldo dated May 1, 2010 provides as follows:

> This patient/seaman presented with history of sudden onset of difficulty in breathing when he was awaken (sic) from sleep feeling as though he had a nightmare. He fell on the floor hitting his right face followed by loss of consciousness for approximately 20 minutes. This was noted on September 24, 2008 while on board ship. He was seen by the ship medical officer who referred him for consult at Clinica de Diagnosticio at Masatian, Sinaloa Mexico. He underwent cranial CT scan and he was confined for one week. He was prescribed Dilantin and other unrecalled medications.

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[37] *Id.* at 71-72. (Underlining ours).

- He was repatriated on October 7, 2008 and had subsequent check up at University of Santo Tomas where he underwent another MRI which revealed intracerebral hemorrhage consisting of blood products in different stages probably secondary to avascular anomaly. He underwent cerebral angiogram which revealed small focal venous channel or venous pooling in the right anterior parietal lobe. He was maintained on Dilantin and was advised brain surgery.
- When seen at the clinic his blood pressure was 120/90 mmHg; PE of the heart and lungs were unremarkable. He presented with a 4/5 motor deficit on the left upper and lower extremities. He also reported bilateral blurring of vision noted since last year.
- He is now unfit to resume work as seaman in any capacity.
- His illness is considered work aggravated/related.
- He requires maintenance medication consisting of Dilantin to prevent recurrence of seizures secondary to his brain injury.
- He may require surgical intervention to evacuate the blood clot in his brain.
- He is not expected to land a gainful employment given his medical background.[38]

The conflicting findings of the company's doctor and the seafarer's physician often stir suits for disability compensation. As an extrajudicial measure of settling their differences, the POEA-SEC gives the parties the option of agreeing jointly on a third doctor whose assessment shall break the impasse and shall be the final and binding diagnosis.[39] The POEA-SEC provides for a procedure to resolve the conflicting findings of a company-designated physician and personal physician, specifically:

SECTION 20. COMPENSATION AND BENEFITS

x x x x x x x x x

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[38] *Id.* at 110-111.

[39] *Maersk Filipinas Crewing Inc. v. Mesina, supra* note 33, at 544-545.

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

3. x x x x x x x x x

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

In *Transocean Ship Management (Phils.), Inc., et al. v. Vedad*,[40] the reason for the third-doctor referral provision in the POEA Standard Employment Contract is that:

> x x x In determining whether or not a given illness is work-related, it is understandable that a company-designated physician would be more positive and in favor of the company than, say, the physician of the seafarer's choice. It is on this account that a seafarer is given the option by the POEA-SEC to seek a second opinion from his preferred physician. And the law has anticipated the possibility of divergence in the medical findings and assessments by incorporating a mechanism for its resolution wherein a third doctor selected by both parties decides the dispute with finality, as provided by Sec. 20 (B) (3) of the POEA-SEC quoted above.

In the instant case, respondent did not seek the opinion of a third doctor. Based on jurisprudence, the findings of the company-designated physician prevail in cases where the seafarer did not observe the third-doctor referral provision in the POEA-SEC. However, if the findings of the company-designated physician are clearly biased in favor of the employer, then courts may give greater weight to the findings of the seafarer's personal physician. Clear bias on the part of the company-designated physician may be shown if there is no scientific relation between the diagnosis and the symptoms felt by the seafarer, or if the final assessment of the company-designated physician is not supported by the medical records of the seafarer.[41]

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[40] 707 Phil. 194 (2013).

[41] *Nonay v. Bahia Shipping Services, Inc., et al.*, G.R. No. 206758, February 17, 2016, 784 SCRA 293.

Petitioners' company-designated physicians, Dr. Ong-Salvador and Dr. Pobre, monitored respondent's case from the beginning. They were the ones who referred the respondent's case to the proper medical specialists Dr. Renato Carlos (neuroradiologist), Dr. Alfred Tan (neurosurgeon) and Dr. Amado San Luis (neurologist) whose medical results are not essentially disputed. Petitioners' physicians monitored respondent's case and issued the certifications on the basis of the medical records available and the results obtained. From the time of his repatriation on October 7, 2008, respondent had been under the care of the company-designated physicians, and the said physicians should be considered to be fully familiar with the illness of respondent. Company-designated physicians Dr. Ong-Salvador and Dr. Pobre were able to closely monitor respondent's condition from the time he was repatriated until the date of his last check-up in March 17, 2009.

In the case of *Vergara G.R. Hammonia Maritime Services, Inc.,*[42] We stated that:

> x x x more weight should be given to the assessment of degree of disability made by the company doctors because they were the ones who attended and treated petitioner Vergara for a period of almost five (5) months from the time of his repatriation to the Philippines on September 5, 2000 to the time of his declaration as fit to resume sea duties on January 31, 2001, and they were privy to petitioner Vergaras case from the very beginning, which enabled the company-designated doctors to acquire a detailed knowledge and familiarity with petitioner Vergaras medical condition which thus enabled them to reach a more accurate evaluation of the degree of any disability which petitioner Vergara might have sustained. These are not mere company doctors. These doctors are independent medical practitioners who passed the rigorous requirements of the employer and are more likely to protect the interest of the employer against fraud.

As previously stated, it is the company-designated physician who is entrusted with the task of assessing the seaman's disability. Their declaration should be given credence, considering the amount of time and effort they gave to monitoring and treating

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[42] 588 Phil. 895, 914-915 (2008).

the respondent's condition. It bears emphasizing that the respondent has been under the care and supervision of the company physicians since his repatriation on October 7, 2008 to March 17, 2009, or almost five (5) months. The medical attention they had given the respondent undeniably enabled them to acquire familiarity and detailed knowledge of the latter's medical condition.[43] On the other hand, We note that the certification of Dr. Vicaldo was replete with details justifying the conclusion that the illness of respondent is work-related.

In the case of *Cagatin v. Magsaysay Maritime Corporation*,[44] We ruled in favor of the company-designated doctors, thus:

> This lack of forthrightness on the part of petitioner impels this Court to favor the earlier report of the company-designated physician, Dr. Cruz, over that of petitioner's chosen physician, Dr. Collantes. There are other cogent reasons, however. First, it is obvious in the report of Dr. Collantes that he only saw petitioner once, or on August 6, 2002, while Dr. Cruz and his team examined and treated petitioner several times, for a period of five (5) months. Second, Dr. Collantes did not perform any sort of diagnostic test or examination on petitioner, unlike Dr. Cruz before him. It has been held in cases of disability benefits claims that in the absence of adequate tests and reasonable findings to support the same, a doctor's assessment should not be taken at face value. Diagnostic tests and/or procedures as would adequately refute the normal results of those administered to the petitioner by the company-designated physicians are necessary for his claims to be sustained. x x x[45]

While it is true that medical reports issued by the company-designated physicians do not bind the courts, Our examination of Dr. Ong-Salvador's certification leads Us to agree with her findings. The respondent was evaluated by a specialist, neurosurgeon Dr. Alfred Tan. The series of tests and evaluations show that Dr. Ong-Salvador's findings were not arrived at

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[43] *Magsaysay Maritime Corporation v. Cedol, supra* note 27, at 369.

[44] G.R. No. 175795, June 22, 2015, 759 SCRA 401.

[45] *Cagatin v. Magsaysay Maritime Corporation, supra,* at 421. (Underlining supplied).

arbitrarily; neither were they biased in petitioner's favor.[46] Respondent had undergone a series of tests from the time he was repatriated on October 7, 2008 until April 30, 2009, when the company-designated doctor issued a medical report.

On the other hand, it is obvious in the report of Dr. Vicaldo that he only saw respondent once, or on May 1, 2010. Dr. Vicaldo did not perform any sort of diagnostic test or examination on respondent. Respondent did not allege how he was examined and treated by Dr. Vicaldo, and how the latter arrived at the conclusion that respondent's illness is work-related.

In the case of *Dalusong v. Eagle Clarc Shipping Philippines, Inc.,*[47] We ruled that "the findings of the company-designated doctor, who, with his team of specialists which included an orthopedic surgeon and physical therapist periodically treated petitioner for months and monitored his condition, deserve greater evidentiary weight than the single medical report of petitioner's doctor, who appeared to have examined petitioner only once."

This Court also affirmed and gave greater weight to the findings of the company-designated physician in the case of *Monana v. MEC Global Shipmanagement*[48] which involved a claim for disability benefits. The company-designated physician and the personal physician had different findings but We ruled that "as between the company-designated doctor who has all the medical records of petitioner for the duration of his treatment and as against the latter's private doctor who merely examined him for a day as an outpatient, the former's finding must prevail."

Thus, in the instant case, the medical certificate issued by Dr. Vicaldo was not based on results from medical tests and procedures. While Dr. Ong-Salvador and Dr. Pobre are familiar with respondent's medical history and condition, thus, their medical opinion on whether respondent's illness is work-

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[46] *Magsaysay Maritime Corporation v. Cedol, supra* note 27, at 366.

[47] G.R. No. 204233, September 3, 2014, 734 SCRA 5, 329.

[48] G.R. No. 196122, November 12, 2014, 740 SCRA 99, 114.

aggravated/-related deserve more credence as opposed to Dr. Vicaldo's unsupported conclusions.

This Court had already noted the unsubstantiated nature of medical certifications issued by Dr. Vicaldo and had warned the Labor Arbiters and the NLRC to keep guard against his medical findings in the case of *Monana v. MEC Global Shipmanagement and Manning Corporation:*[49]

> This court notes that in several cases filed before this court on seafarer's disability claims, Dr. Vicaldo's findings have not been given due merit due to their unsubstantiated nature.
>
> It, therefore, behooves the National Labor Relations Commission, perhaps, to cause an investigation on why, in spite of the unsupported nature of Dr. Vicaldo's submissions, Labor Arbiters still give him credence. This unnecessarily clogs their administrative dockets, and the dockets of the Court of Appeals and this court. Judicial efficiency requires that Labor Arbiters and the National Labor Relations Commission keep guard against these types of doctors and their medical findings.

From the foregoing, considering that the company-designated physicians closely monitored respondent from his repatriation, and considering further that respondent did not observe the third-doctor referral provision, We adopt the ruling of the NLRC, thus:

> Such a bare statement that "*His illness is considered work-aggravated/related",* without any explanation as to the same, much less how such conclusion was arrived at, could not even begin to prove that complainant's illness is work-related, much less overcome the findings of the company-designated physicians which were arrived at after a considerable period of treatment. On the other hand, it is apparent from Dr. Vicaldo's certification that, just as in the aforecited Magsaysay case,[50] he examined complainant only once.
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> x x x x x x x x x

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[49] *Monana v. MEC Global Shipmanagement and Manning Corporation, et al., supra.*

[50] *Magsaysay Maritime Corp. v. Velazquez,* 591 Phil. 839 (2008).

Likewise, the mere fact that complainant's disability exceeded 120 days, by itself, is not a ground to entitle him to full disability benefits. Such should be read in relation to the provisions of the POEA Standard Employment Contract which, among others, provide that an illness should be work-related. Without a finding that an illness is work-related, any discussion on the period of disability is moot. xxx[51]

Furthermore, while the law recognizes that an illness may be disputably presumed to be work-related, the seafarer or the claimant must still show a reasonable connection between the nature of work on board the vessel and the illness contracted or aggravated.[52]

In *Quizora v. Denholm Crew Management (Phils.), Inc.,*[53] Quizora argued that he did not have the burden to prove that his illness was work-related because it was disputably presumed by law. This Court ruled that Quizora "cannot simply rely on the disputable presumption provision mention in Section 20 (B) (4) of the 2000 POEA-SEC." This Court further discussed that:

> At any rate, granting that the provisions of the 2000 POEA-SEC apply, the disputable presumption provision in Section 20 (B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. Contrary to his position, he still has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of his employment contract. He cannot simply argue that the burden of proof belongs to respondent company.

For disability to be compensable under **Section 20 (B) of the 2000 POEA-SEC**, two elements must concur: (1) the injury or illness must be **work-related**; and (2) the work-related injury or illness must have **existed during the term of the seafarer's employment contract**.

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[51] *Rollo,* p. 111.

[52] *Nonay v. Bahia Shipping Services, Inc., et al.*, *supra* note 41, at 311.

[53] 676 Phil. 313 (2011).

In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.

The 2000 POEA-SEC defines "work-related injury" as "injury[ies] resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 3 2-A of this contract with the conditions set therein satisfied.[54]

The rule on the burden of proof with regard to claims for disability benefits was also discussed in *Dohle-Philman Manning Agency, Inc., et al. v. Heirs of Gazzingan*:[55]

[T]he 2000 POEA-SEC has created a presumption of compensability for those illnesses which are not listed as an occupational disease. Section 20 (B), paragraph (4) states that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." Concomitant with this presumption is the burden placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease and only a reasonable proof of work-connection, not direct causal relation is required to establish compensability of illnesses not included in the list of occupational diseases.

The said ruling was reiterated in the case of *Nonay vs. Bahia Shipping Services, Inc.*,[56] We held:

In this case, however, petitioner was unable to present substantial evidence to show the relation between her work and the illness she contracted. The record of this case does not show whether petitioner's *adenomyoma* was pre-existing; hence, this court cannot determine whether it was aggravated by the nature of her employment. She also failed to fulfill the requisites of Section 32-A of the 2000 POEA-

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[54] *Quizora v. Denholm Crew Management (Phils.), Inc., supra*, at 327. (Emphasis in the original; Underlining ours).

[55] G.R. No. 199568, June 17, 2015, 759 SCRA 209, 226.

[56] *Supra* note 41. at 314-315.

SEC for her illness to be compensable, thus, her claim for disability benefits cannot be granted.

Petitioner argues that her illness is the result of her "constantly walking upward and downward on board the vessel carrying loads" and that she "acquired her illness on board respondents' vessel during the term of her employment contract with respondents as Casino [Attendant] [.]"

However, petitioner did not discuss the duties of a Casino Attendant. She also failed to show the causation between walking, carrying heavy loads, and *adenomyoma.* Petitioner merely asserts that since her illness developed while she was on board the vessel, it was work-related.

In *Cagatin v. Magsaysay Maritime Corporation, et al.*,[57] Cagatin was hired as a cabin steward. He alleged that his injuries were due to the hazardous tasks he was made to perform, which were beyond the job description in his contract. This court held that since Cagatin did not allege what the tasks of a cabin steward were, there was no means by which the court could determine whether the tasks he performed were, indeed, hazardous.

In the same manner, this court has no means to determine whether petitioner's illness is work-related or work-aggravated since petitioner did not describe the nature of her employment as Casino Attendant.

Here, assuming that cavernoma is not idiopathic, respondent did not adduce proof to show a reasonable connection between his work as Security Guard and his cavernoma. There was no showing how the demands and nature of his job *vis-a-vis* the ship's working conditions increased the risk of contracting cavernoma. It must be stressed that respondent was hired by petitioners on a 10-month contract on June 6, 2008. While on board the vessel, he suffered from difficulty of breathing and other symptoms of his current illness. When respondent got sick, he was on board only for three (3) months. Because of this short span of time, then the presentation of evidence showing the relation between respondent's work as Security Guard and his illness becomes all the more crucial.

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[57] *Supra* note 44.

Respondent argued that his illness is work-related invoking the rulings in the cases of *Philimare, Inc., et al. v. Suganob*,[58] *Wallem Maritime Services, Inc. v. NLRC, et al.,*[59]and *Tibulan v. Inciong*.[60] The argument is baseless.

In the case of *Philimare, Inc., et al. v. Suganob,* the medical certificate issued by the company physician did not conflict with that issued by the physician chosen by Suganob. The medical certificate issued by the company physician which stated that Suganob was fit to return to work was conditional because Suganob still has to maintain his medications. On the other hand, the medical certificate of the physician chosen by Suganob indicated that Suganob's illness recurred and continued which rendered him unfit to continue his work. In both medical certificates, it is clear that Suganob was not considered as totally cured and fit to return to work.

In the case of *Wallem Maritime Services, Inc. v. NLRC, et al.,*[61] it cannot be denied that there was at least a reasonable connection between the seafarer's job and his lung infection, which eventually developed into *septicemia* and ultimately caused his death. As utilityman on board the vessel, the seafarer was exposed to harsh sea weather, chemical irritants, dusts, etc., all of which invariably contributed to his illness.

Lastly, in the case of *Tibulan v. Inciong,*[62] Tibulan had worked for the company for almost thirty-five (35) years up to his death. His having served as Barge Patron had some connection with the emergence and development of the disease which caused his death. The barge to which the deceased was assigned was being used to transport heavy cargoes up and down and around the Pasig River and had under his supervision only two (2)

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[58] 579 Phil. 706 (2008).

[59] 376 Phil. 738 (1999).

[60] 257 Phil. 324 (1989).

[61] *Supra* note 59.

[62] *Supra* note 60.

sailors. The said conditions led this Court to the inference that while the position of the deceased was not one requiring mainly manual labor, nonetheless, Tibulan could not have avoided strenuous physical activity in carrying out his duties. Certainly, the captain or patron of a cargo barge was not expected to, and would not have been allowed to, live his life behind a desk.

Since respondent's illness is not work-related, this Court need not labor on respondent's argument that his illness must be deemed total and permanent since he was unable to work for more than 120 days.[63] Such should be read in relation to the POEA-SEC which, among others, provide that an illness should be work-related.

Let it be stressed that the seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor. Both law and evidence must be on his side.[64]

Moreover, respondent argued that he was presumed fit at the time he entered into a contract with the petitioners as revealed by the results of the PEME. The fact that respondent passed the company's PEME is of no moment. We have ruled that in the past the PEME is not exploratory in nature. It was not intended to be a totally in-depth and thorough examination of an applicant's medical condition. The PEME merely determines whether one is fit to work at sea or fit for sea service; it does not state the real state of health of an applicant. In short, the fit to work declaration in the seafarer's PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment. Thus, we held in *NYK-FIL Ship Management, Inc. v. NLRC*:[65]

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[63] *Monana v. MEC Global Shipmanagement and Manning Corporation, et al.*, *supra* note 49.

[64] *Veritas Maritime Corporation and/or Erickson Marquez v. Gepanaga, Jr.,* G.R. No. 206285, February 4, 2015, 750 SCRA 105, 120.

[65] 534 Phil. 725 (2006).

While a PEME may reveal enough for the petitioner (vessel) to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform petitioners of a seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory.

As the Court has previously ruled, a PEME is not exploratory in nature and cannot be relied upon to arrive at a seafarer's true state of health.[66] While a PEME may reveal enough for the company to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform the company of a seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory. It was only after respondent was subjected to extensive medical procedures including MRI that respondent's illness was finally diagnosed as a case of cavernoma.[67]

For respondent to, thus, claim that the issuance of a clean bill of health to a seafarer after a PEME means that his illness was acquired during the seafarer's employment is a *non sequitur*. In the case of *NYK-FIL Ship Management Inc. v. NLRC,*[68] We held:

We do not agree with the respondents claim that by the issuance of a clean bill of health to Roberto, made by the physicians selected/ accredited by the petitioners, it necessarily follows that the illness for which her husband died was acquired during his employment as a fisherman for the petitioners.

The pre-employment medical examination conducted on Roberto could not have divulged the disease for which he died, considering the fact that most, if not all, are not so exploratory. The disease of GFR, which is an indicator of chronic renal failure, is measured thru the renal function test. In pre-employment examination, the urine analysis (urinalysis), which is normally included measures only the

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[66] *Dohle-Philman Manning Agency, Inc., et al. v. Heirs of Gazzingan, supra* note 55, at 229.

[67] *NYK-FIL Ship Management, Inc. v. NLRC, supra* note 65, at 739.

[68] *Id.*

creatinine, the presence of which cannot conclusively indicate chronic renal failure.[69]

The Court is wary of the principle that provisions of the POEA-SEC must be applied with liberality in favor of the seafarers, for it is only then that its beneficent provisions can be fully carried into effect. However, on several occasions when disability claims anchored on such contract were based on flimsy grounds and unfounded allegations, the Court never hesitated to deny the same. Claims for compensation based on surmises cannot be allowed; liberal construction is not a license to disregard the evidence on record or to misapply the laws.[70]

However, We emphasize that the constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers. The commitment of this Court to the cause of labor does not prevent us from sustaining the employer when it is in the right. We should always be mindful that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.[71]

In sum, We hold that the respondent is not entitled to total and permanent disability benefits for his failure to refute the company- designated physicians' findings that his illness was not work-related. The CA, thus, erred in finding grave abuse of discretion on the part of the NLRC when the latter affirmed the LA's Decision not to grant permanent and total disability benefits to the respondent despite insufficient evidence to justify this grant.[72] We note that petitioners shouldered all the expenses in connection with respondent's medical treatment, and respondent was, likewise, paid his sickness wages.

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[69] *Id*. at 740, citing *Gau Sheng Phils., Inc. v. Joaquin,* 481 Phil. 222, 237 (2004). (Underscoring supplied)

[70] *Cagatin v. Magsaysay Maritime Corporation*, *supra* note 44, at 429.

[71] *Magsaysay Maritime Corporation v. Cedol, supra* note 27, at 369.

[72] *Id.*

WHEREFORE, the Petition for Review on *Certiorari* is hereby **GRANTED.** The assailed Decision dated February 12, 2013 and Resolution dated July 10, 2013 of the Court of Appeals in CA-G.R. SP No. 120043, respectively, are hereby **REVERSED** and **SET ASIDE**. The Decision dated January 25, 2011 of the National Labor Relations Commission, First Division, in NLRC LAC Case No. OFW (L)-10-000850-10 is **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Mendoza, Leonen,* and *Martires, JJ.,* concur.

THIRD DIVISION

[A.C. No. 8658. April 24, 2017]

FRANCIS C. ARSENIO, *complainant, vs.* **ATTY. JOHAN A. TABUZO**, *respondent.*

SYLLABUS

LEGAL ETHICS; DISBARMENT CASE; COMPLAINT MUST BE PROVED BY SUBSTANTIAL EVIDENCE.— A case of suspension or disbarment is *sui generis* and not meant to grant relief to a complainant as in a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts. Jurisprudence is replete with cases reiterating that in disbarment proceedings, the burden of proof rests upon the complainant. In the recent case of *Reyes v. Nieva*, this Court had the occasion to clarify that the proper evidentiary threshold in disbarment cases is substantial evidence.

APPEARANCES OF COUNSEL

Faustino S. Estioco, Jr., for respondent.

D E C I S I O N

TIJAM, *J.*:

Before this Court is a Complaint-Affidavit[1] dated June 18, 2010 filed by Francis C. Arsenio (Arsenio), seeking the disbarment of Atty. Johan A. Tabuzo (Atty. Tabuzo) for conduct unbecoming of a member of the Bar.

The Facts

This case stemmed from an administrative complaint filed by Arsenio before the Philippine Overseas Employment Administration (POEA) against JS Contractor, a recruitment agency.[2] During a scheduled hearing on May 10, 2000, Atty. Tabuzo, the Overseas Employment Adjudicator who was assigned to hear the case, asked him to sign three blank sheets of paper to which Arsenio complied.

A week after the scheduled hearing, Arsenio asked Atty. Tabuzo the reason why he was made to sign blank sheets of paper. Atty. Tabuzo angrily said, "*Bwiset! Napakakulit mo, doon mo malaman mamaya pagdating ng kalaban mo!*" Thereafter, Arsenio called up the office of Senator Rene Cayetano who advised him to make a clarification regarding the signed sheets of blank paper. Arsenio then approached Atty. Tabuzo but the latter again shouted at him saying, "*Bwiset! Goddamit! Alam mo ba na maraming abogado dito sa POEA na nagbebenta ng kaso?*" Atty. Tabuzo further said, "*Sabihin mo sa Cayetano mo at abogado mo na baka masampal ko sa mga mukha nila ang pinirmahan mong blanko! Sabihin mo na ang pangalan ko*

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[1] *Rollo*, pp. 1-2.

[2] *Id.*

ay Atty. Romeo Tabuzo at kung hindi ka bumalik bukas ay mawawala ang kaso mo!"[3]

Arsenio later on discovered that his case against JS Contractor was dismissed. Hence, he filed a complaint against Atty. Romeo Tabuzo before the Office of the Ombudsman for violation of Republic Act (RA) No. 3019 or the *"Anti-Graft and Corrupt Practices Act."*

In a Resolution[4] dated February 1, 2002, Graft Investigation Officer II Wilfred Pascasio ordered that an Information be filed against Atty. Romeo Tabuzo upon finding of probable cause against him.

Atty. Tabuzo filed a Motion for Reconsideration alleging, among others, that there is no Atty. Romeo Tabuso in the POEA and that he was never handed any copy of summons. He claimed that he was merely taking the initiative in filing the said motion to clear his name as he believed he was the person referred to in the earlier Order of the Office of the Ombudsman. Nonetheless, such motion was subsequently denied in an Order dated July 16, 2002.

Meanwhile, in a Decision dated December 6, 2011, the Regional Trial Court, Branch 213 of Mandaluyong City acquitted Atty. Tabuzo for violation of RA No. 3019.

Subsequently, Arsenio filed the present Complaint-Affidavit before this Court. In a Resolution[5] dated November 24, 2010, this Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. The IBP Commission on Bar Discipline (IBP-CBD) docketed the case as CBD Case No. 11-2912, entitled "*Francis C. Arsenio v. Atty. Johan Tabuzo.*"

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[3] *Rollo,* at pp. 1-2.

[4] *Rollo,* at pp. 57-60.

[5] *Rollo,* at p. 287.

In his Omnibus Comment with Motion to Dismiss,[6] Atty. Tabuzo denied the accusations against him, claiming that the alleged unethical acts are baseless. He averred that he had never acted in any conduct unbecoming of a public officer or uttered invectives and other alleged acts. To support his claim, he attached the Affidavits[7] of two (2) Overseas Employment Adjudicators (OEA) who occupied the tables immediately adjacent to him in the Recruitment Regulations Branch. In said Affidavits, the OEAs attested to the effect that no such incident or any untoward event that called for attention transpired. Atty. Tabuzo also said that his constitutional right to due process was violated since he was not notified of the case against him before the Office of the Ombudsman as he was never served nor had personally received Orders from such Office.

The Resolutions of the IBP Commissioner and Board of Governors

In his Report and Recommendation,[8] Investigating Commissioner Atty. Eldrid Antiquierra recommended that reprimand be imposed upon Atty. Tabuzo. The Investigating Commissioner ruled in such wise on the basis of the sworn affidavit of Arsenio and the Resolution of the Office of the Ombudsman.

In a Resolution dated March 20, 2013, the IBP Board of Governors resolved to adopt and approve with modification the said Report and Recommendation of the Investigating Commissioner upon finding that Atty. Tabuzo violated the Lawyer's Oath and Rule 8.01[9] of the Code of Professional Responsibility. Hence, the IBP Board of Governors suspended Atty. Tabuzo from the practice of law for three months.

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[6] *Rollo,* at pp. 30-47.

[7] *Rollo,* at pp. 86-87.

[8] *Rollo,* at pp. 247-249.

[9] Rule 8.01. A lawyer shall not, in his professional dealings, use language which are abusive, offensive or otherwise improper.

Atty. Tabuzo filed a Motion for Reconsideration but it was denied.[10]

The Issue

Whether or not the instant disbarment complaint constitutes a sufficient basis to disbar Atty. Tabuzo.

The Court's Ruling

After examining the records of this case, the Court resolves to dismiss the instant disbarment complaint.

A case of suspension or disbarment is *sui generis* and not meant to grant relief to a complainant as in a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts.[11]

Jurisprudence is replete with cases reiterating that in disbarment proceedings, the burden of proof rests upon the complainant.[12] In the recent case of *Reyes v. Nieva,*[13] this Court had the occasion to clarify that the proper evidentiary threshold in disbarment cases is substantial evidence.

In this case, noteworthy is the fact that the reason advanced by the IBP-CBD in recommending reprimand against Atty. Tabuzo is its consideration of the: (1) Resolution issued by the Office of the Ombudsman, which states that there was probable cause against Atty. Tabuzo for violating RA 3019; and (2) Complaint-Affidavit of Arsenio, which alleges that Atty. Tabuzo made offensive statements.

However, a careful scrutiny of the evidence presented reveals that the degree of proof indispensable in a disbarment case was not met.

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[10] *Rollo,* at p. 294.

[11] *Cristobal v. Renta*, A.C. No. 9925, September 17, 2014.

[12] *Concepcion v. Fandino, Jr.*, A.C. No. 3677, June 21, 2000.

[13] A.C. No. 8560, September 6, 2016.

Firstly, the Resolution issued by the Office of the Ombudsman is predicated on the fact that the allegations of Arsenio were uncontroverted; hence, the Office of the Ombudsman concluded that such allegations were true. However, there was a seeming discrepancy as to the name of Atty. Tabuzo when a case against him was filed before the Office of the Ombudsman. Undisputedly, the case before said Office was filed against a certain Atty. Romeo Tabuso, when the name of herein respondent is Atty. Johan Tabuzo. As such, the respondent claimed that he failed to controvert Arsenio's claims because he never received any notice or order from the Office of the Ombudsman. In fact, the said Resolution of the Office of the Ombudsman was made on the basis of the complaint of Arsenio alone since Atty. Tabuzo failed to file his answer.[14] However, a reading of the RTC Decision reveals that Arsenio was able to verify the identity of Atty. Johan Tabuzo, not as Atty. Romeo Tabuso, even before he filed his complaint before the Office of the Ombudsman. It is confusing, therefore, why there was discrepancy as to the name of herein respondent when a clarification was already made. Nevertheless, Atty. Tabuzo was acquitted[15] in a criminal case filed against him on the basis of the Resolution of the Office of the Ombudsman.

Despite such acquittal, a well-settled finding of guilt in a criminal case will not necessarily result in a finding of liability in the administrative case. Conversely, the acquittal does not necessarily exculpate one administratively.[16] Thus, it is proper to deal with the other evidence presented by Arsenio.

The Court, thus, finds that the Complaint-Affidavit of Arsenio failed to discharge the necessary burden of proof. In his Sworn Affidavit, Arsenio merely narrated that Atty. Tabuzo uttered offensive statements and no other evidence was presented to substantiate his claim. Emphatically, such Complaint-Affidavit is self-serving.

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[14] *Rollo,* at p. 59.

[15] *Rollo,* at pp. 233-243.

[16] *Spouses Saunders v. Pagano-Calde*, A.C. No. 8708, August 12, 2015.

Summarily, the Resolution issued by the Office of the Ombudsman together with the Affidavit of Arsenio cannot be considered as substantial evidence. For one, the Resolution of the Office of the Ombudsman was decided on the basis of the failure of Atty. Tabuzo to controvert the allegations of Arsenio. Also, the Complaint-Affidavit was not sufficient as no evidence was further offered to prove the allegations contained therein.

While the quantum of evidence required in disbarment cases is substantial evidence, this Court is not persuaded to exercise its disciplinary authority over Atty. Tabuzo.

WHEREFORE, premises considered, the Court resolved to **DISMISS** the disbarment complaint against Atty. Johan A. Tabuzo.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Reyes,* and *Jardeleza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 184262.[*] April 24, 2017]

UNIVERSITY OF SANTO TOMAS (UST), *petitioner, vs.* **SAMAHANG MANGGAGAWA NG UST, FERNANDO PONTESOR,[**] RODRIGO CLACER, SANTIAGO BUISA, JR., and JIMMY NAZARETH**, *respondent.*

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[*] Part of the Supreme Court's Case Decongestion Program.

[**] "Pontessor" in some parts of the records.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; REVIEW OF A COURT OF APPEALS RULING IN A LABOR CASE; THE ISSUE IS WHETHER THE COURT OF APPEALS CORRECTLY DETERMINED THE PRESENCE OR ABSENCE OF GRAVE ABUSE OF DISCRETION IN THE NLRC DECISION; DISCUSSED.— "Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision." Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. "In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition."

2. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; REGULAR EMPLOYMENT; DISCUSSED.— Article 295 of the Labor Code, as amended, distinguishes project employment from regular employment x x x [Thus,] the law provides for two (2) types of regular employees, namely: (*a*) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer (first category); and (*b*) those who have rendered at least one year of service, whether continuous or broken, with respect to the

activity in which they are employed (second category). In *Universal Robina Corporation v. Catapang*, citing *Abasolo v. NLRC*, the Court laid down the test in determining whether one is a regular employee, to wit: The primary standard, therefore, of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of work performed and its relation to the scheme of the particular business or trade in its entirety. **Also, if the employee has been performing the job for at least a year, even if the performance is not continuous and merely intermittent, the law deems repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is considered regular, but only with respect to such activity and while such activity exists**.

3. **ID.; ID.; PROJECT EMPLOYMENT; REQUISITES; IF IT IS APPARENT FROM THE CIRCUMSTANCES OF THE CASE THAT PERIODS HAVE BEEN IMPOSED TO PRECLUDE ACQUISITION OF TENURIAL SECURITY BY THE EMPLOYEE, SUCH PROJECT OR FIXED TERM CONTRACTS ARE DISREGARDED FOR BEING CONTRARY TO PUBLIC POLICY.—** In *Gadia v. Sykes Asia, Inc.*, the Court discussed the requisites for a valid project employment, to wit: A project employee is assigned to a project which begins and ends at determined or determinable times. Unlike regular employees who may only be dismissed for just and/or authorized causes under the Labor Code, the services of employees who are hired as "project[-based] employees" may be lawfully terminated at the completion of the project. According to jurisprudence, the principal test for determining whether particular employees are properly characterized as "project[-based] employees" as distinguished from "regular employees," is **whether or not the employees were assigned to carry out a "specific project or undertaking,"** the duration (and scope) of which were specified at the time they were engaged for that project. **The project could either be (1) a particular job or undertaking that is within the regular or usual business**

> **of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (2) a particular job or undertaking that is not within the regular business of the corporation.** In order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent employees from attaining a regular status, **employers claiming that their workers are project[-based] employees should not only prove that the duration and scope of the employment was specified at the time they were engaged, but also, that there was indeed a project**. x x x Lest it be misunderstood, there are instances when the validity of project or fixed term employments were upheld on the ground that it was "agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter." However, if it is apparent from the circumstances of the case "that periods have been imposed to preclude acquisition of tenurial security by the employee," such project or fixed term contracts are disregarded for being contrary to public policy, as in this case.

APPEARANCES OF COUNSEL

Divina & Uy Law Offices for petitioner.
Apolinario N. Lomabao, Jr. for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 12, 2008 and the Resolution[3] dated August

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[1] *Rollo*, pp. 8-47.

[2] *Id*. at 52-66. Penned by Associate Justice Romeo F. Barza with Associate Justices Mario L. Guariña III and Japar B. Dimaampao concurring.

[3] *Id*. at 68.

22, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 85464, which reversed and set aside the Resolutions dated March 26, 2004[4] and May 25, 2004[5] of the National Labor Relations Commission (NLRC) in NLRC NCR CASE NO. 00-08-08586-99 (NLRC CA No. 035509-03) and, accordingly, reinstated the Decision[6] dated October 23, 2002 of the Labor Arbiter (LA) in NLRC-NCR-0-08-08586-99 declaring respondents Fernando Pontesor (Pontesor), Rodrigo Clacer (Clacer), Santiago Buisa, Jr. (Buisa), and Jimmy Nazareth (Nazareth; Pontesor, *et al.*, collectively) as regular employees of petitioner University of Santo Tomas (petitioner) and, thus, were illegally dismissed by the latter.

The Facts

The instant case stemmed from a complaint[7] for regularization and illegal dismissal filed by respondents Samahang Manggagawa ng UST and Pontesor, *et al*. (respondents) against petitioner before the NLRC. Respondents alleged that on various periods spanning the years 1990-1999, petitioner repeatedly hired Pontesor, *et al.* to perform various maintenance duties within its campus, *i.e.*, as laborer, mason, tinsmith, painter, electrician, welder, carpenter. Essentially, respondents insisted that in view of Pontesor, *et al.*'s performance of such maintenance tasks throughout the years, they should be deemed regular employees of petitioner. Respondents further argued that for as long as petitioner continues to operate and exist as an educational institution, with rooms, buildings, and facilities to maintain, the latter could not dispense with Pontesor, *et al*.'s services which are necessary and desirable to the business of petitioner.[8]

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[4] *Id*. at 188-197. Signed by Presiding Commissioner Lourdes C. Javier and Commissioners Ernesto C. Verceles and Tito F. Genilo.

[5] *Id*. at 204-205.

[6] *Id*. at 140-144. Penned by LA Madjayran H. Ajan.

[7] *Id*. at 70-71.

[8] See *id*. at 52-55, 140-141, and 190-191.

On the other hand, while petitioner admitted that it repeatedly hired Pontesor, *et al.* in different capacities throughout the aforesaid years, it nevertheless maintained that they were merely hired on a per-project basis, as evidenced by numerous Contractual Employee Appointments (CEAs)[9] signed by them. In this regard, petitioner pointed out that each of the CEAs that Pontesor, *et al*. signed defined the nature and term of the project to which they are assigned, and that each contract was renewable in the event the project remained unfinished upon the expiration of the specified term. In accordance with the express provisions of said CEAs, Pontesor, *et al.*'s project employment were automatically terminated: (*a*) upon the expiration of the specific term specified in the CEA; (*b*) when the project is completed ahead of such expiration; or (*c*) in cases when their employment was extended due to the non-completion of the specific project for which they were hired, upon the completion of the said project. As such, the termination of Pontesor, *et al.*'s employment with petitioner was validly made due to the completion of the specific projects for which they were hired.[10]

The LA Ruling

In a Decision[11] dated October 23, 2002, the LA ruled in Pontesor, *et al.*'s favor and, accordingly, ordered petitioner to reinstate them to their former jobs with full backwages and without loss of seniority rights.[12] The LA found that Pontesor, *et al*. should be deemed as petitioner's regular employees, considering that: (*a*) they have rendered at least one (1) year of service to petitioner as its employees; (*b*) the activities for which they were hired for are vital or inherently indispensable to the maintenance of the buildings or classrooms where petitioner's classes were held; and (*c*) their CEAs were contrived

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[9] *CA rollo*, pp. 25-43.

[10] See *rollo*, pp. 55, 141-142, and 191-194.

[11] *Id*. at 140-144. Penned by Labor Arbiter Madjayran H. Ajan.

[12] *Id*. at 144.

to preclude them from obtaining security of tenure. In this light and in the absence of any valid cause for termination, the LA concluded that Pontesor, *et al*. were illegally dismissed by petitioner.[13]

Aggrieved, petitioner appealed[14] to the NLRC.

The NLRC Ruling

In a Resolution[15] dated March 26, 2004, the NLRC vacated the LA ruling and, consequently, entered a new one dismissing respondents' complaint for lack of merit.[16] Contrary to the LA's findings, the NLRC found that Pontesor, *et al*. cannot be considered regular employees as they knowingly and voluntarily entered into fixed term contracts of employment with petitioner. As such, they could not have been illegally dismissed upon the expiration of their respective last valid and binding fixed term employment contracts with petitioner. This notwithstanding, the NLRC rejected petitioner's contention that Pontesor, *et al.* should be deemed project employees, ratiocinating that their work were not usually necessary and desirable to petitioner's main business or trade, which is to provide elementary, secondary, tertiary, and post-graduate education. As such, the NLRC classified Pontesor, *et al*. as mere fixed term casual employees.[17]

Respondents moved for reconsideration,[18] which was, however, denied in a Resolution[19] dated May 25, 2004. Dissatisfied, they filed a petition[20] for *certiorari* before the CA.

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[13] See *id*. at 142-143.

[14] Dated January 15, 2002. *Id*. at 147-164.

[15] *Id*. at 188-197.

[16] *Id*. at 197.

[17] See *id*. at 194-196.

[18] Dated April 21, 2004. *Id*. at 198-202.

[19] *Id*. at 204-205.

[20] Dated August 2, 2004. *Id*. at 206-215.

The CA Ruling

In a Decision[21] dated June 12, 2008, the CA reversed and set aside the NLRC ruling and, accordingly, reinstated that of the LA.[22] It held that Pontesor, *et al*. cannot be considered as merely fixed term or project employees, considering that: (*a*) they performed work that is necessary and desirable to petitioner's business, as evidenced by their repeated rehiring and petitioner's continuous need for their services; and (*b*) the specific undertaking or project for which they were employed were not clear as the project description set forth in their respective CEAs were either too general or too broad. Thus, the CA classified Pontesor, *et al*. as regular employees, who are entitled to security of tenure and cannot be terminated without any just or authorized cause.[23]

Undaunted, petitioner moved for reconsideration,[24] but the same was denied in a Resolution[25] dated August 22, 2008; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly ruled that Pontesor, *et al*. are regular employees and, consequently, were illegally dismissed by petitioner.

The Court's Ruling

The petition is without merit.

"Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in

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[21] *Id*. at 52-66.

[22] *Id*. at 65.

[23] See *id*. at 58-65.

[24] Dated July 2, 2008. *Id*. at 278-305.

[25] *Id*. at 68.

contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision."[26]

Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[27]

"In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition."[28]

Guided by the foregoing considerations, the Court finds that the CA correctly ascribed grave abuse of discretion on the part of the NLRC, as its finding that Pontesor, *et al.* are not regular employees of petitioner patently deviates from the evidence on record as well as settled legal principles of labor law.

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[26] See *Quebral v. Angbus Construction, Inc.*, G.R. No. 221897, November 7, 2016, citing *Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 707 (2009).

[27] See *id.*, citing *Gadia v. Sykes Asia, Inc.*, G.R. No. 209499, January 28, 2015, 748 SCRA 633, 641.

[28] See *id.*; citations omitted.

Article 295[29] of the Labor Code,[30] as amended, distinguishes project employment from regular employment as follows:

> Art. 295 [280]. *Regular and casual employment.* – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
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> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

Under the foregoing provision, the law provides for two (2) types of regular employees, namely: (*a*) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer (first category); and (*b*) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed (second category).[31] In *Universal*

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[29] Formerly Article 280. See Department Advisory No. 01, series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED" dated July 21, 2015.

[30] Presidential Decree No. 442, entitled "A DECREE INSTITUTING A LABOR CODE, THEREBY REVISING AND CONSOLIDATING LABOR AND SOCIAL LAWS TO AFFORD PROTECTION TO LABOR, PROMOTE EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT AND INSURE INDUSTRIAL PEACE BASED ON SOCIAL JUSTICE" (May 1, 1974).

[31] *Kimberly Independent Labor Union for Solidarity, Activism, and Nationalism – Organized Labor Ass'n. in Line Industries and Agriculture (KILUSAN-OLALIA) v. Drilon*, 263 Phil. 892, 905 (1990).

Robina Corporation v. Catapang,[32] citing *Abasolo v. NLRC*,[33] the Court laid down the test in determining whether one is a regular employee, to wit:

> The primary standard, therefore, of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of work performed and its relation to the scheme of the particular business or trade in its entirety. **Also, if the employee has been performing the job for at least a year, even if the performance is not continuous and merely intermittent, the law deems repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is considered regular, but only with respect to such activity and while such activity exists**.[34] (Emphasis and underscoring supplied.

In *Kimberly Independent Labor Union for Solidarity, Activism, and Nationalism – Organized Labor Ass'n. in Line Industries and Agriculture (KILUSAN-OLALIA) v. Drilon* (*Kimberly*),[35] the company was engaged in the manufacture of paper products, while the questioned employees occupied the positions of mechanics, electricians, machinists, machine shop helpers, warehouse helpers, painters, carpenters, pipefitters and masons. In that case, the Court held that since they have worked for the company for more than one (1) year, they should belong to the second category of regular employees by operation of law.

In the case at bar, a review of Pontesor, *et al*.'s respective CEAs[36] reveal that petitioner repeatedly rehired them for various

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[32] 509 Phil. 765 (2005).

[33] 400 Phil. 86, 103 (2000); further citation omitted.

[34] *Id.* at 778-779.

[35] *Supra* note 31.

[36] *CA rollo*, pp. 25-43.

positions in the nature of maintenance workers, such as laborer, mason, painter, tinsmith, electrician, carpenter, and welder, for various periods spanning the years 1990-1999. Akin to the situation of the employees in *Kimberly*, Pontesor, *et al.*'s nature of work are not necessary and desirable to petitioner's usual business as an educational institution; hence, removing them from the ambit of the first category of regular employees under Article 295 of the Labor Code. Nonetheless, it is clear that their respective cumulative periods of employment as per their respective CEAs each exceed one (1) year. Thus, Pontesor, *et al.* fall under the second category of regular employees under Article 295 of the Labor Code. Accordingly, they should be deemed as regular employees but only with respect to the activities for which they were hired and for as long as such activities exist.

In this relation, the Court clarifies that Pontesor, *et al.* were not project employees of petitioner, who were validly terminated upon the completion of their respective projects/undertakings. In *Gadia v. Sykes Asia, Inc.*,[37] the Court discussed the requisites for a valid project employment, to wit:

> A project employee is assigned to a project which begins and ends at determined or determinable times. Unlike regular employees who may only be dismissed for just and/or authorized causes under the Labor Code, the services of employees who are hired as "project[-based] employees" may be lawfully terminated at the completion of the project.
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> According to jurisprudence, the principal test for determining whether particular employees are properly characterized as "project[-based] employees" as distinguished from "regular employees," is **whether or not the employees were assigned to carry out a "specific project or undertaking,"** the duration (and scope) of which were specified at the time they were engaged for that project. **The project could either be (1) a particular job or undertaking that is within the regular or usual business of the employer company, but which**

[37] *Supra* note 27.

is distinct and separate, and identifiable as such, from the other undertakings of the company; or (2) a particular job or undertaking that is not within the regular business of the corporation. In order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent employees from attaining a regular status, **employers claiming that their workers are project[-based] employees should not only prove that the duration and scope of the employment was specified at the time they were engaged, but also, that there was indeed a project**.[38] (Emphases and underscoring supplied)

As aptly held by the CA, Pontesor, *et al*. could not be considered as project employees because the specific undertakings or projects for which they were employed were not clearly delineated. This is evidenced by the vagueness of the project descriptions set forth in their respective CEAs,[39] which states that they were tasked "to assist" in various carpentry, electrical, and masonry work. In fact, when the aforesaid CEAs are pieced together, it appears that during the years 1990 to 1999, Pontesor, *et al*. were each engaged to perform all-around maintenance services throughout the various facilities/ installations in petitioner's campus. Thus, it seems that petitioner, through the CEAs, merely attempted to compartmentalize Pontesor, *et al.*'s various tasks into purported "projects" so as to make it appear that they were hired on a per-project basis. Verily, the Court cannot countenance this practice as to do so would effectively permit petitioners to avoid hiring permanent or regular employees by simply hiring them on a temporary or casual basis, thereby violating the employees' security of tenure relative to their jobs.[40]

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[38] *Id*. at 643, citing *Omni Hauling Services v. Bon*, 742 Phil. 335, 343-344 (2014).

[39] *CA rollo*, pp. 25-43.

[40] See *Universal Robina Corporation v. Catapang*, *supra* note 32, at 779.

Lest it be misunderstood, there are instances when the validity of project[41] or fixed term[42] employments were upheld on the ground that it was "agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter."[43] However, if it is apparent from the circumstances of the case "that periods have been imposed to preclude acquisition of tenurial security by the employee," such project or fixed term contracts are disregarded for being contrary to public policy,[44] as in this case.

In view of the foregoing, Pontesor, *et al*. should, as discussed earlier, be considered *regularized casual employees* who enjoy, *inter alia*, security of tenure. Accordingly, they cannot be terminated from employment without any just and/or authorized cause, which unfortunately, petitioner was guilty of doing in this case. Hence, Pontesor, *et al*. must be reinstated to their former or equivalent positions, with full backwages and without loss of seniority rights. As pointed out by the LA, the NLRC Computation & Examination Unit should be directed to compute the monetary awards that petitioner should be ordered to pay Pontesor, *et al*. as a consequence of this ruling.

WHEREFORE, the petition is **DENIED**. The Decision dated June 12, 2008 and the Resolution dated August 22, 2008 of the Court of Appeals in CA-G.R. SP No. 85464 are hereby **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Caguioa, JJ.,* concur.

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[41] See *Gadia v. Sykes Asia, Inc.*, *supra* note 27.

[42] See *Brent School, Inc. v. Zamora*, 260 Phil. 747, 763 (1990).

[43] *Id*.

[44] See *Poseidon Fishing v. NLRC*, 518 Phil. 146, 157 (2006).

FIRST DIVISION

[G.R. No. 185024. April 24, 2017]

JOSELITO HERNAND M. BUSTOS, *petitioner, vs.* **MILLIANS SHOE, INC., SPOUSES FERNANDO AND AMELIA CRUZ, and the REGISTER OF DEEDS OF MARIKINA CITY,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION CODE; CLOSE CORPORATION; REQUIREMENTS.— To be considered a close corporation, an entity must abide by the requirements laid out in Section 96 of the Corporation Code, which reads: Sec. 96. *Definition and applicability of Title.* - A close corporation, within the meaning of this Code, is one whose **articles of incorporation** provide that: (1) All the corporation's issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding twenty (20); (2) all the issued stock of all classes shall be subject to one or more specified restrictions on transfer permitted by this Title; and (3) The corporation shall not list in any stock exchange or make any public offering of any of its stock of any class. Notwithstanding the foregoing, a corporation shall not be deemed a close corporation when at least two-thirds (2/3) of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation within the meaning of this Code. x x x. In *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals*, this Court held that a narrow distribution of ownership does not, by itself, make a close corporation. Courts must look into the articles of incorporation to find provisions expressly stating that (1) the number of stockholders shall not exceed 20; or (2) a preemption of shares is restricted in favor of any stockholder or of the corporation; or (3) the listing of the corporate stocks in any stock exchange or making a public offering of those stocks is prohibited.

2. ID.; ID.; ID.; RULE THAT STOCKHOLDERS THEREIN SHALL BE SUBJECT TO ALL LIABILITIES OF DIRECTORS; NO INFERENCE THAT SAID

STOCKHOLDERS SHALL BE LIABLE FOR CORPORATE DEBTS AND OBLIGATIONS.— Section 97 of the Corporation Code only specifies that "the stockholders of the corporation shall be subject to all liabilities of directors." Nowhere in that provision do we find any inference that stockholders of a close corporation are automatically liable for corporate debts and obligations. Parenthetically, only Section 100, paragraph 5, of the Corporation Code explicitly provides for personal liability of stockholders of close corporation, *viz*: Sec. 100. *Agreements by stockholders.*– x x x 5. To the **extent** that the stockholders are **actively engaged** in the management or operation of the business and affairs of a close corporation, the stockholders shall be held to strict fiduciary duties to each other and among themselves. Said stockholders shall be **personally liable** for **corporate torts** unless the corporation has obtained reasonably adequate **liability insurance.** x x x We thus apply the general doctrine of separate juridical personality, which provides that a corporation has a legal personality separate and distinct from that of people comprising it. By virtue of that doctrine, stockholders of a corporation enjoy the principle of limited liability: the corporate debt is not the debt of the stockholder. Thus, being an officer or a stockholder of a corporation does not make one's property the property also of the corporation.

3. **ID.; ID.; REHABILITATION PROCEEDINGS; OPPOSITION TO PETITIONS FOR REHABILITATION; TIME-BAR RULE DOES NOT APPLY WHERE THE CLAIM WAS NOT OVER THE CORPORATION-OWNED PROPERTIES.—** In rehabilitation proceedings, claims of creditors are limited to demands of whatever nature or character against a **debtor or its property**, whether for money or otherwise. In several cases, we have already held that stay orders should only cover those claims directed against corporations or their properties, against their guarantors, or their sureties who are not solidarily liable with them, to the exclusion of accommodation mortgagors. To repeat, properties merely owned by stockholders cannot be included in the inventory of assets of a corporation under rehabilitation. Given that the true owner the subject property is not the corporation, petitioner cannot be considered a creditor of MSI but a holder of a claim against respondent spouses. Rule 4, Section 6 of the Interim Rules of

Procedure on Corporate Rehabilitation, directs creditors of the debtor to file an opposition to petitions for rehabilitation within 10 days before the initial hearing of rehabilitation proceedings. Since petitioner does not hold any claim over the properties owned by MSI, the time-bar rule does not apply to him.

APPEARANCES OF COUNSEL

Bustos Villafuerte & Associates for petitioner.
Karlo L. Calingasan for respondents.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Rule 45 Petition[1] assailing the Decision and the Resolution[2] of the Court of Appeals (CA). The CA did not find any grave abuse of discretion on the part of the Regional Trial Court, Imus, Cavite, Branch 21 (RTC). The RTC had issued Orders[3] refusing to exclude the subject property in the Stay Order pertaining to assets under rehabilitation of respondent Millians Shoe, Inc. (MSI).

FACTS OF THE CASE

Spouses Fernando and Amelia Cruz owned a 464-square-meter lot covered by Transfer Certificate of Title (TCT) No. N-126668.[4] On 6 January 2004, the City Government of Marikina levied the property for nonpayment of real estate taxes. The Notice of Levy was annotated on the title on 8 January

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[1] *Rollo*, pp. 10-38; Petition filed on 28 November 2008.

[2] *Id*. at 40-55, 57-59; the CA Decision dated 12 June 2008 and Resolution dated 27 October 2008 in CA-G.R. SP No. 100298 were penned by Associate Justice Normandie B. Pizarro, with Associate Justices Josefina Guevara-Salonga and Magdangal M. de Leon concurring.

[3] *Id*. at 79, 86; Orders dated 18 January 2007 and 27 June 2007 in SEC Case No. 036-04 penned by Executive Judge Norberto J. Quisumbing, Jr.

[4] *Id*. at 72-73 (with back pages).

2004. On 14 October 2004, the City Treasurer of Marikina auctioned off the property, with petitioner Joselito Hernand M. Bustos emerging as the winning bidder.

Petitioner then applied for the cancellation of TCT No. N-126668. On 13 July 2006, the Regional Trial Court, Marikina City, Branch 273, rendered a final and executory Decision ordering the cancellation of the previous title and the issuance of a new one under the name of petitioner.[5]

Meanwhile, notices of *lis pendens* were annotated on TCT No. N-126668 on 9 February 2005.[6] These markings indicated that SEC Corp. Case No. 036-04, which was filed before the RTC and involved the rehabilitation proceedings for MSI, covered the subject property and included it in the Stay Order issued by the RTC dated 25 October 2004.[7]

On 26 September 2006, petitioner moved for the exclusion of the subject property from the Stay Order.[8] He claimed that the lot belonged to Spouses Cruz who were mere stockholders and officers of MSI. He further argued that since he had won the bidding of the property on 14 October 2004, or before the annotation of the title on 9 February 2005, the auctioned property could no longer be part of the Stay Order.

The RTC denied the entreaty of petitioner. It ruled that because the period of redemption up to 15 October 2005 had not yet lapsed at the time of the issuance of the Stay Order on 25 October 2004, the ownership thereof had not yet been transferred to petitioner.[9]

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[5] *Id*. at 85; Entry of Final Judgment dated 24 August 2006 in LRC Case No. 06-846-MK issued by Officer-in-Charge E.C.F. Potian-Munsod.

[6] *Id*. at 73 (back page).

[7] *Id*. at 67-71.

[8] *Id*. at 74-78; Motion to Exclude from the Stay Order dated October 25, 2004 the Parcel of Land covered by TCT No. N-126668 of the Registry of Deeds of Marikina City together with the Improvements Existing Thereon Registered in the Names of the Spouses Fernando C. Cruz and Amelia M. Cruz, filed on 26 September 2006.

[9] *Id*. at 79.

Petitioner moved for reconsideration,[10] but to no avail.[11] He then filed an action for certiorari before the CA. He asserted that the Stay Order undermined the taxing powers of the local government unit. He also reiterated his arguments that Spouses Cruz owned the property, and that the lot had already been auctioned to him.

In the assailed Decision dated 12 June 2008, the CA brushed aside the claim that the suspension orders undermined the power to tax. As regards petitioner's main contention, the CA ruled as follows:

> In the case at bar, the delinquent tax payers were the Cruz Spouses who were the registered owners of the said parcel of land at the time of the delinquency sale. The sale was held on October 14, 2004 and the Cruz Spouses had until October 15, 2005 within which to redeem the parcel of land. The stay order was issued on October 25, 2004 and inscribed at the back of the title on February 9, 2005, which is within the redemption period. The Cruz Spouses were still the owners of the land at the time of the issuance of the stay order. The said parcel of land which secured several mortgage liens for the account of MSI remains to be an asset of the Cruz Spouses, who are the stockholders and/or officers of MSI, a close corporation. Incidentally, as an exception to the general rule, in a close corporation, the stockholders and/or officers usually manage the business of the corporation and are subject to all liabilities of directors, i.e. personally liable for corporate debts and obligations. Thus, the Cruz Spouses being stockholders of MSI are personally liable for the latter's debt and obligations.

Petitioner unsuccessfully moved for reconsideration. The CA maintained its ruling and even held that his prayer to exclude the property was time-barred by the 10-day reglementary period to oppose rehabilitation petitions under Rule 4, Section 6 of the Interim Rules of Procedure on Corporate Rehabilitation.

Before this Court, petitioner maintains three points: (1) the Spouses Cruz are not liable for the debts of MSI; (2) the Stay

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[10] *Id*. at 80-84; Motion for Reconsideration filed on 13 February 2007.

[11] *Id*. at 86; Order of the RTC dated 27 June 2007.

Order undermines the taxing power of Marikina City; and (3) the time bar rule does not apply to him, because he is not a creditor of MSI.[12]

In their Comment,[13] respondents do not contest that Spouses Cruz own the subject property. Rather, respondents assert that as stockholders and officers of a close corporation, they are personally liable for its debts and obligations. Furthermore, they argue that since the Rehabilitation Plan of MSI has been approved, petitioner can no longer assail the same.

ISSUE OF THE CASE

The controlling issue in this case is whether the CA correctly considered the properties of Spouses Cruz answerable for the obligations of MSI.

If the answer is in the affirmative, then the courts *a quo* correctly ruled that the Stay Order involving the assets of MSI included the property covered by TCT No. N-126668. Petitioner would also be considered a creditor of MSI who must timely file an opposition to the proposed rehabilitation plan of the corporation.

RULING OF THE COURT

We set aside rulings of the CA for lack of basis.

In finding the subject property answerable for the obligations of MSI, the CA characterized respondent spouses as stockholders of a close corporation who, as such, are liable for its debts. This conclusion is baseless.

To be considered a close corporation, an entity must abide by the requirements laid out in Section 96 of the Corporation Code, which reads:

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[12] *Id*. at 10-38, 114-119, 122-144; Petition filed on 28 November 2008, Reply filed on 16 October 2009, and Petitioner's Memorandum filed on 22 January 2010.

[13] *Id*. at 101-110, 151-170; Comment filed by respondents on 16 April 2009 and Memorandum for the Respondents filed on 5 February 2010.

Sec. 96. *Definition and applicability of Title.* – A close corporation, within the meaning of this Code, is one whose **articles of incorporation** provide that: (1) All the corporation's issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding twenty (20); (2) all the issued stock of all classes shall be subject to one or more specified restrictions on transfer permitted by this Title; and (3) The corporation shall not list in any stock exchange or make any public offering of any of its stock of any class. Notwithstanding the foregoing, a corporation shall not be deemed a close corporation when at least two-thirds (2/3) of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation within the meaning of this Code. x x x. (Emphasis supplied)

In *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals*,[14] this Court held that a narrow distribution of ownership does not, by itself, make a close corporation. Courts must look into the articles of incorporation to find provisions expressly stating that (1) the number of stockholders shall not exceed 20; or (2) a preemption of shares is restricted in favor of any stockholder or of the corporation; or (3) the listing of the corporate stocks in any stock exchange or making a public offering of those stocks is prohibited.

Here, neither the CA nor the RTC showed its basis for finding that MSI is a close corporation. The courts *a quo* did not at all refer to the Articles of Incorporation of MSI. The Petition submitted by respondent in the rehabilitation proceedings before the RTC did not even include those Articles of Incorporation among its attachments.[15]

In effect, the CA and the RTC deemed MSI a close corporation based on the allegation of Spouses Cruz that it was so. However, mere allegation is not evidence and is not equivalent to proof.[16] **For this reason alone, the CA rulings should be set aside.**

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[14] 357 Phil. 631 (1998).

[15] *Rollo,* pp. 60-66.

[16] *De Jesus v. Guerrero III,* 614 Phil. 520 (2009).

Furthermore, we find that the CA seriously erred in portraying the import of Section 97 of the Corporation Code. Citing that provision, the CA concluded that "in a close corporation, the stockholders and/or officers usually manage the business of the corporation and are subject to all liabilities of directors, i.e. personally liable for corporate debts and obligations."[17]

However, Section 97 of the Corporation Code only specifies that "the stockholders of the corporation shall be subject to all liabilities of directors." Nowhere in that provision do we find any inference that stockholders of a close corporation are automatically liable for corporate debts and obligations.

Parenthetically, only Section 100, paragraph 5, of the Corporation Code explicitly provides for personal liability of stockholders of close corporation, *viz*:

Sec. 100. *Agreements by stockholders.* –

x x x x x x x x x

5. To the **extent** that the stockholders are **actively engaged** in the management or operation of the business and affairs of a close corporation, the stockholders shall be held to strict fiduciary duties to each other and among themselves. Said stockholders shall be **personally liable** for **corporate torts** unless the corporation has obtained reasonably adequate **liability insurance.** (Emphasis supplied)

As can be read in that provision, several requisites must be present for its applicability. None of these were alleged in the case of Spouses Cruz. Neither did the RTC or the CA explain the factual circumstances for this Court to discuss the personally liability of respondents to their creditors because of "corporate torts."[18]

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[17] *Rollo*, p. 51.

[18] *Naguiat v. National Labor Relations Commission,* 336 Phil. 545, 562 (1997). "Our jurisprudence is wanting as to the definite scope of 'corporate tort.' Essentially, 'tort' consists in the violation of a right given or the omission of a duty imposed by law. Simply stated, tort is a breach of a legal duty."

We thus apply the general doctrine of separate juridical personality, which provides that a corporation has a legal personality separate and distinct from that of people comprising it.[19] By virtue of that doctrine, stockholders of a corporation enjoy the principle of limited liability: the corporate debt is not the debt of the stockholder.[20] Thus, being an officer or a stockholder of a corporation does not make one's property the property also of the corporation.[21]

Situs Development Corp. v. Asiatrust Bank[22] is analogous to the case at bar. We held therein that the parcels of land mortgaged to creditor banks were owned not by the corporation, but by the spouses who were its stockholders. Applying the doctrine of separate juridical personality, we ruled that the parcels of land of the spouses could not be considered part of the corporate assets that could be subjected to rehabilitation proceedings.

In rehabilitation proceedings, claims of creditors are limited to demands of whatever nature or character against a **debtor or its property**, whether for money or otherwise.[23] In several cases,[24] we have already held that stay orders should only cover those claims directed against corporations or their properties, against their guarantors, or their sureties who are not solidarily liable with them, to the exclusion of accommodation

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[19] *Heirs of Tan Uy v. International Exchange Bank,* 703 Phil. 477 (2013).

[20] *Philippine National Bank v. Hydro Resources Contractors Corp.,* 706 Phil. 297 (2013). See Cesar L. Villanueva and Teresa S. Villanueva-Tiansay, *Philippine Corporate Law* (2013) 880. "x x x the corporate defenses of limited liability should still be available to stockholders of such close corporations."

[21] *Traders Royal Bank v. Court of Appeals,* 258 Phil. 584 (1989).

[22] 691 Phil. 707 (2012).

[23] *Interim Rules of Procedure on Corporate Rehabilitation*, A.M. No. 00-8-10-SC (2000), Rule 2, Section 1.

[24] *Supra* note 22. See also *Siochi Fishery Enterprises, Inc. v. Bank of the Philippine Islands,* 675 Phil. 916 (2011); and *Asiatrust Development Bank v. First Aikka Development, Inc.,* 665 Phil. 313 (2011).

mortgagors.[25] To repeat, properties merely owned by stockholders cannot be included in the inventory of assets of a corporation under rehabilitation.

Given that the true owner the subject property is not the corporation, petitioner cannot be considered a creditor of MSI but a holder of a claim against respondent spouses.[26]

Rule 4, Section 6 of the Interim Rules of Procedure on Corporate Rehabilitation, directs creditors of the debtor to file an opposition to petitions for rehabilitation within 10 days before the initial hearing of rehabilitation proceedings. Since petitioner does not hold any claim over the properties owned by MSI, the time-bar rule does not apply to him.

WHEREFORE, the Petition for review on certiorari filed by petitioner Joselito Hernand M. Bustos is **GRANTED**. The Decision dated 12 June 2008 and Resolution dated 27 October 2008 of the Court of Appeals in C.A.-G.R. SP. No. 100298 are **REVERSED** and **SET ASIDE**.

SO ORDERED.

Leonardo-de Castro, del Castillo, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

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[25] *Pacific Wide Realty and Development Corp. v. Puerto Azul Land, Inc.,* 620 Phil. 520 (2009).

[26] *Supra* note 23.

FIRST DIVISION

[G.R. No. 189950.* April 24, 2017]

BERNADETTE S. BILAG, ERLINDA BILAG-SANTILLAN, DIXON BILAG, REYNALDO B. SUELLO, HEIRS OF LOURDES S. BILAG, HEIRS OF LETICIA BILAG-HANAOKA, and HEIRS OF NELLIE BILAG, *petitioners, vs.* **ESTELA AY-AY, ANDRES ACOP, JR., FELICITAS AP-AP, SERGIO AP-AP, JOHN NAPOLEON A. RAMIREZ, JR., and MA. TERESA A. RAMIREZ**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; WHEN A COURT HAS NO JURISDICTION OVER THE SUBJECT MATTER, THE ONLY POWER IT HAS IS TO DISMISS THE ACTION; THUS, A COURT OR TRIBUNAL SHOULD FIRST DETERMINE WHETHER OR NOT IT HAS JURISDICTION OVER THE SUBJECT MATTER PRESENTED BEFORE IT, CONSIDERING THAT ANY ACT THAT IT PERFORMS WITHOUT JURISDICTION SHALL BE NULL AND VOID, AND WITHOUT ANY BINDING LEGAL EFFECTS.— Jurisprudence has consistently held that "[j]urisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action." Perforce, it is important that a court or tribunal should

* Part of the Court's Decongestion Program.

first determine whether or not it has jurisdiction over the subject matter presented before it, considering that any act that it performs without jurisdiction shall be null and void, and without any binding legal effects. The Court's pronouncement in *Tan v. Cinco,* is instructive on this matter, to wit: A judgment rendered by a court without jurisdiction is null and void and may be attacked anytime. It creates no rights and produces no effect. It remains a basic fact in law that the choice of the proper forum is crucial, as the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect.

2. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1271 (AN ACT NULLIFYING DECREES OF REGISTRATION AND CERTIFICATES OF TITLE COVERING LANDS WITHIN BAGUIO TOWNSITE RESERVATION ISSUED IN CIVIL RESERVATION CASE NO. 1 GLRO RECORD NO. 211); SUBJECT LANDS SHOULD BE CLASSIFIED AS LANDS OF THE PUBLIC DOMAIN AS THE SAME ARE UNREGISTERED AND UNTITLED AND STILL FORM PART OF THE BAGUIO TOWNSITE RESERVATION.— In a catena of cases, and more importantly, in Presidential Decree No. (PD) 1271, it was expressly declared that all orders and decisions issued by the Court of First Instance of Baguio and Benguet in connection with the proceedings for the reopening of Civil Reservation Case No. 1, GLRO Record 211, covering lands within the Baguio Townsite Reservation are null and void and without force and effect. While PD 1271 provides for a means to validate ownership over lands forming part of the Baguio Townsite Reservation, it requires, among others, that a Certificate of Title be issued on such lands on or before July 31, 1973. In this case, records reveal that the subject lands are unregistered and untitled, as petitioners' assertion to that effect was not seriously disputed by respondents. Clearly, the award of lots 2 and 3 of the 159,496-square meter parcel of land designated by the Bureau of Lands as Approved Plan No. 544367, Psu 189147 – which includes the subject lands – to Iloc Bilag by virtue of the reopening of Civil Reservation Case No. 1, GLRO Record 211, is covered by the blanket nullification provided under PD 1271, and consistently affirmed by the prevailing case law. In view of

the foregoing, it is only reasonable to conclude that the subject lands should be properly classified as lands of the public domain as well.

3. ID.; CIVIL PROCEDURE; QUIETING OF TITLE; THE REGIONAL TRIAL COURT LACKS POWER OR AUTHORITY TO HEAR AND RESOLVE A PARTY'S ACTION FOR QUIETING OF TITLE WHERE THE DISPUTED PROPERTIES ARE STILL PART OF PUBLIC DOMAIN.— [S]ince the subject lands are untitled and unregistered public lands, then petitioners correctly argued that it is the Director of Lands who has the authority to award their ownership. Thus, the RTC Br. 61 correctly recognized its lack of power or authority to hear and resolve respondents' action for quieting of title. In *Heirs of Pocdo v. Avila*, the Court ruled that the trial court therein correctly dismissed an action to quiet title on the ground of lack of jurisdiction for lack of authority to determine who among the parties have better right over the disputed property, which is admittedly still part of public domain for being within the Baguio Townsite Reservation.

4. ID.; ID.; ID.; AN ACTION FOR QUIETING OF TITLE SHOULD BE DISMISSED WHERE THE REGIONAL TRIAL COURT LACKS JURISDICTION OVER THE SUBJECT MATTER OF THE CASE. — [R]TC Br. 61 has no jurisdiction over Civil Case No. 5881-R as the plaintiffs therein (herein respondents) seek to quiet title over lands which belong to the public domain. Necessarily, Civil Case No. 5881-R must be dismissed on this ground. It should be stressed that the court *a quo's* lack of subject matter jurisdiction over the case renders it without authority and necessarily obviates the resolution of the merits of the case. To reiterate, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action, as any act it performs without jurisdiction is null and void, and without any binding legal effects.

APPEARANCES OF COUNSEL

Oracion Barlis and Associates for petitioners.
J.R. Simbillo & Associates for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 19, 2009 and the Resolution[3] dated September 3, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 86266, which set aside the Order[4] dated October 10, 2005 of the Regional Trial Court of Baguio City, Branch 61 (RTC Br. 61), and consequently, remanded the case to the latter court for trial.

The Facts

The instant case stemmed from a Complaint[5] dated August 12, 2004 for Quieting of Title with Prayer for Preliminary Injunction filed by respondents Estela Ay-Ay, Andres Acop, Jr., Felicitas Ap-Ap, Sergio Ap-Ap, John Napoleon A. Ramirez, Jr., and Ma. Teresa A. Ramirez (respondents) against petitioners Bernadette S. Bilag, Erlinda Bilag-Santillan, Dixon Bilag, Reynaldo B. Suello, Heirs of Lourdes S. Bilag, Heirs of Leticia Bilag-Hanaoka, and Heirs of Nellie Bilag before the RTC Br. 61, docketed as Civil Case No. 5881-R. Essentially, respondents alleged that Iloc Bilag, petitioners' predecessor-in-interest, sold to them separately various portions of a 159,496-square meter parcel of land designated by the Bureau of Lands as Approved Plan No. 544367, Psu 189147 situated at Sitio Benin, Baguio City (subject lands), and that they registered the corresponding Deeds of Sale[6] with the Register of Deeds of Baguio City. According to respondents, Iloc Bilag not only acknowledged full payment

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[1] *Rollo*, pp. 13-52.

[2] *Id*. at 54-64. Penned by Associate Justice Romeo F. Barza with Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok concurring.

[3] *Id*. at 65-66.

[4] Records, pp. 413-423. Penned by Presiding Judge Antonio C. Reyes.

[5] *Rollo*, pp. 108-121.

[6] *Id*. at 97-105.

and guaranteed that his heirs, successors-in-interest, and executors are to be bound by such sales, but he also caused the subject lands to be removed from the Ancestral Land Claims. Respondents further alleged that they have been in continuous possession of the said lands since 1976 when they were delivered to them and that they have already introduced various improvements thereon. Despite the foregoing, petitioners refused to honor the foregoing sales by asserting their adverse rights on the subject lands. Worse, they continued to harass respondents, and even threatened to demolish their improvements and dispossess them thereof. Hence, they filed the instant complaint to quiet their respective titles over the subject lands and remove the cloud cast upon their ownership as a result of petitioners' refusal to recognize the sales.[7]

For their part, petitioners filed a Motion to Dismiss[8] dated November 4, 2004 on the grounds of lack of jurisdiction, prescription/laches/estoppel, and *res judicata*. Anent the first ground, petitioners averred that the subject lands are untitled, unregistered, and form part of the Baguio Townsite Reservation which were long classified as lands of the public domain. As such, the RTC has no jurisdiction over the case as it is the Land Management Bureau (formerly the Bureau of Lands) which is vested with the authority to determine issues of ownership over unregistered public lands.[9]

As to the second ground, petitioners argued that it is only now, or more than 27 years from the execution of the Deeds of Sale, that respondents seek to enforce said Deeds; thus, the present action is already barred by prescription and/or laches.[10]

Regarding the final ground, petitioners pointed out that on January 27, 1998, respondents had already filed a complaint against them for injunction and damages, docketed as Civil Case No. 3934-R before the Regional Trial Court of Baguio

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[7] *Id*. at 108-121. See also *id*. at 56-58.

[8] *Id*. at 122-141.

[9] *Id*. at 122-124.

[10] *Id*. at 125-128.

City, Branch 5 (RTC Br. 5), wherein they principally asserted their ownership over the subject lands. However, RTC Br. 5 dismissed Civil Case No. 3934-R for lack of merit on the ground of respondents' failure to show convincing proof of ownership over the same,[11] which Order of dismissal was then affirmed by the CA on appeal.[12] Eventually, the Court issued a Resolution dated January 21, 2004[13] declaring the case closed and terminated for failure to file the intended petition subject of the Motion for Extension to file the same. In view of the foregoing, petitioners contended that due to the final and executory ruling in Civil Case No. 3934-R, the filing of Civil Case No. 5881-R seeking to establish the ownership thereof is already barred by *res judicata*.[14]

The RTC Br. 61 Ruling

In an Order[15] dated October 10, 2005, the RTC Br. 61 ruled in petitioners' favor, and consequently, ordered the dismissal of Civil Case No. 5881-R on the following grounds: (*a*) it had no authority to do so; (*b*) the Deeds of Sale in respondents' favor could not as yet be considered title to the subject lands, noting the failure of respondents to perfect their title or assert ownership and possession thereof for the past 27 years; and (*c*) the filing of the instant case is barred by *res judicata* considering the final and executory Decision dismissing the earlier filed Civil Case No. 3934-R where respondents similarly sought to be declared the owners of the subject lands.[16]

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[11] See Order dated September 22, 1999 penned by Judge Antonio M. Esteves; records, pp. 381-384.

[12] See Decision dated October 29, 2002 (*rollo*, pp. 77-83) and Resolution dated September 8, 2003 (*rollo*, pp. 85-86).

[13] The January 21, 2004 Resolution was not attached to the *rollo*. However, the Court issued a Resolution dated July 19, 2004 and clarified their ruling, declaring the case closed and terminated. *Id*. at 87-88.

[14] *Id*. at 128-140.

[15] Records, pp. 413-423.

[16] *Id*. at 421-423.

Aggrieved, respondents appealed to the CA.[17]

The CA Ruling

In a Decision[18] dated March 19, 2009, the CA set aside the dismissal of Civil Case No. 5881-R, and accordingly, remanded the case to the court *a quo* for trial.[19] It held that Civil Case No. 3934-R was an action for injunction where respondents sought to enjoin petitioners' alleged entry into the subject lands and their introduction of improvements thereat; whereas Civil Case No. 5881-R is an action to quiet title where respondents specifically prayed, *inter alia*, for the removal of the cloud upon their ownership and possession of the subject lands. In this light, the CA concluded that while these cases may involve the same properties, the nature of the action differs; hence, *res judicata* is not a bar to the present suit. On the issue of laches, prescription or estoppel, the CA pointed out that in view of respondents' allegation that they have been in possession of the subject lands since 1976, their action to quiet title is imprescriptible.[20]

Dissatisfied, petitioners moved for reconsideration[21] which was, however, denied in a Resolution[22] dated September 3, 2009; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly set aside the dismissal of Civil Case No. 5881-R, and accordingly, remanded the case to the court *a quo* for trial.

The Court's Ruling

The petition is meritorious.

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[17] See Notice of Appeal dated October 27, 2005; *id*. at 425-426.

[18] *Rollo*, pp. 54-64.

[19] *Id*. at 63.

[20] *Id*. at 60-63.

[21] CA *rollo*, pp. 235-254.

[22] *Rollo*, pp. 65-66.

At the outset, it must be stressed that in setting aside the Order of dismissal of Civil Case No. 5881-R due to the inapplicability of the grounds of *res judicata* and prescription/ laches, the CA notably omitted from its discussion the first ground relied upon by petitioners, which is lack of jurisdiction.

Jurisprudence has consistently held that "[j]urisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action."[23] Perforce, it is important that a court or tribunal should first determine whether or not it has jurisdiction over the subject matter presented before it, considering that any act that it performs without jurisdiction shall be null and void, and without any binding legal effects. The Court's pronouncement in *Tan v. Cinco*,[24] is instructive on this matter, to wit:

> A judgment rendered by a court without jurisdiction is null and void and may be attacked anytime. It creates no rights and produces no effect. It remains a basic fact in law that the choice of the proper forum is crucial, as the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect.[25]

Now, on the issue of jurisdiction, a review of the records shows that the subject lands form part of a 159,496-square meter

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[23] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015, 759 SCRA 306, 311-312. Citations omitted.

[24] See G.R. No. 213054, June 15, 2016.

[25] *Id*., citing *Tiu v. First Plywood Corporation*, 629 Phil. 120, 133 (2010).

parcel of land designated by the Bureau of Lands as Approved Plan No. 544367, Psu 189147 situated at Sitio Benin, Baguio City. Notably, such parcel of land forms part of the Baguio Townsite Reservation, a portion of which, or 146, 428 square meters, was awarded to Iloc Bilag due to the reopening of Civil Reservation Case No. 1, GLRO Record No. 211, as evidenced by a Decision[26] dated April 22, 1968 promulgated by the then-Court of First Instance of Baguio City.

In a catena of cases,[27] and more importantly, in Presidential Decree No. (PD) 1271,[28] it was expressly declared that all orders and decisions issued by the Court of First Instance of Baguio and Benguet in connection with the proceedings for the reopening of Civil Reservation Case No. 1, GLRO Record 211, covering lands within the Baguio Townsite Reservation are null and void and without force and effect. While PD 1271 provides for a means to validate ownership over lands forming part of the Baguio Townsite Reservation, it requires, among others, that a Certificate of Title be issued on such lands on or before July 31, 1973.[29] In this case, records reveal that the subject lands are

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[26] CA *rollo*, pp. 91-94. Penned by Judge Pio R. Marcos.

[27] See *Presidential Decree No. 1271 Committee v. Rodriguez de Guzman*, G.R. No. 187291, December 5, 2016; *Residents of Lower Atab & Teachers' Village, Sto. Tomas Proper Barangay, Baguio City v. Sta. Monica Industrial & Development Corporation*, 745 Phil. 554 (2014); *Heirs of Pocdo v. Avila*, 730 Phil. 215 (2014); *Republic v. Sangalang*, 243 Phil. 46 (1988); *Republic v. Fañgonil*, 218 Phil. 484 (1984); *Republic v. Marcos*, 152 Phil. 204 (1973); *Republic of the Philippines v. Marcos*, 140 Phil. 241 (1969).

[28] Entitled "AN ACT NULLIFYING DECREES OF REGISTRATION AND CERTIFICATES OF TITLE COVERING LANDS WITHIN THE BAGUIO TOWNSITE RESERVATION ISSUED IN CIVIL REGISTRATION CASE NO. 1, GLRO RECORD NO. 211 PURSUANT TO REPUBLIC ACT NO. 931, AS AMENDED, BUT CONSIDERING AS VALID CERTAIN TITLES OF SUCH LANDS THAT ARE ALIENABLE AND DISPOSABLE UNDER CERTAIN CONDITIONS AND FOR OTHER PURPOSES," approved on December 22, 1977.

[29] See Section 1, PD 1271 which reads:

SECTION 1. All orders and decisions issued by the Court of First Instance of Baguio and Benguet in connection with the proceedings for the reopening of Civil Reservation Case No. 1, GLRO Record No. 211, covering lands

unregistered and untitled, as petitioners' assertion to that effect was not seriously disputed by respondents. Clearly, the award of lots 2 and 3 of the 159,496-square meter parcel of land designated by the Bureau of Lands as Approved Plan No. 544367, Psu 189147 – which includes the subject lands – to Iloc Bilag by virtue of the reopening of Civil Reservation Case No. 1, GLRO Record 211, is covered by the blanket nullification provided under PD 1271, and consistently affirmed by the prevailing case law. In view of the foregoing, it is only reasonable to conclude that the subject lands should be properly classified as lands of the public domain as well.

Therefore, since the subject lands are untitled and unregistered public lands, then petitioners correctly argued that it is the Director of Lands who has the authority to award their ownership.[30] Thus, the RTC Br. 61 correctly recognized its lack of power or authority to hear and resolve respondents'

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within the Baguio Townsite Reservation, and decreeing such lands in favor of private individuals or entities, are hereby declared null and void and without force and effect; PROVIDED, HOWEVER, that all certificates of titles issued on or before July 31, 1973 shall be considered valid and the lands covered by them shall be deemed to have been conveyed in fee simple to the registered owners upon a showing of, and compliance with, the following conditions:

(a) The lands covered by the titles are not within any government, public or quasi-public reservation, forest, military or otherwise, as certified by appropriating government agencies;

(b) Payment by the present title holder to the Republic of the Philippines of an amount equivalent to fifteen per centum (15%) of the assessed value of the land whose title is voided as of revision period 1973 (P.D. 76), the amount payable as follows: Within ninety (90) days of the effectivity of this Decree, the holders of the titles affected shall manifest their desire to avail of the benefits of this provision and shall pay ten per centum (10%) of the above amount and the balance in two equal installments, the first installment to be paid within the first year of the effectivity of this Decree and the second installment within a year thereafter.

[30] See *People v. Pareja*, 267 Phil. 172 (1990). See also Section 4 of Commonwealth Act No. 141, entitled "AN ACT TO AMEND AND COMPILE THE LAWS RELATIVE TO LANDS OF THE PUBLIC DOMAIN," otherwise known as the "PUBLIC LAND ACT," (approved on November 7, 1936) which reads:

action for quieting of title.[31] In *Heirs of Pocdo v. Avila*,[32] the Court ruled that the trial court therein correctly dismissed an action to quiet title on the ground of lack of jurisdiction for lack of authority to determine who among the parties have better right over the disputed property, which is admittedly still part of public domain for being within the Baguio Townsite Reservation, *viz.*:

> The DENR Decision was affirmed by the Office of the President which held that **lands within the Baguio Townsite Reservation belong to the public domain and are no longer registrable under the Land Registration Act**. The Office of the President ordered the disposition of the disputed property in accordance with the applicable rules of procedure for the disposition of alienable public lands within the Baguio Townsite Reservation, particularly Chapter X of Commonwealth Act No. 141 on Townsite Reservations and other applicable rules.
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> **Having established that the disputed property is public land, the trial court was therefore correct in dismissing the complaint to quiet title for lack of jurisdiction. The trial court had no jurisdiction to determine who among the parties have better right over the disputed property which is admittedly still part of the public domain**. As held in *Dajunos v. Tandayag*:
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> > x x x The Tarucs' action was for "quieting of title" and necessitated determination of the respective rights of the litigants, both claimants to a free patent title, over a piece of property, admittedly public land. The law, as relied upon by jurisprudence, lodges "the power of executive control, administration, disposition and alienation of public lands with the Director of Lands subject, of course, to the control of the Secretary of Agriculture and Natural Resources."

Section 4. Subject to said control, the Director of Lands shall have direct executive control of the survey, classification, lease, sale or any other form of concession or disposition and management of the lands of the public domain, and his decisions as to questions of fact shall be conclusive when approved by the Secretary of Agriculture and Commerce.

[31] See records, p. 421.

[32] 730 Phil. 215 (2014).

> In sum, the decision rendered in civil case 1218 on October 28, 1968 is a patent nullity. **The court below did not have power to determine who (the Firmalos or the Tarucs) were entitled to an award of free patent title over that piece of property that yet belonged to the public domain.** Neither did it have power to adjudge the Tarucs as entitled to the "true equitable ownership" thereof, the latter's effect being the same: the exclusion of the Firmalos in favor of the Tarucs.

In an action for quieting of title, the complainant is seeking for "an adjudication that a claim of title or interest in property adverse to the claimant is invalid, to free him from the danger of hostile claim, and to remove a cloud upon or quiet title to land where stale or unenforceable claims or demands exist." Under Articles 476 and 477 of the Civil Code, the two indispensable requisites in an action to quiet title are: (1) that the plaintiff has a legal or equitable title to or interest in the real property subject of the action; and (2) that there is a cloud on his title by reason of any instrument, record, deed, claim, encumbrance or proceeding, which must be shown to be in fact invalid or inoperative despite *its prima facie* appearance of validity.

In this case, petitioners, claiming to be owners of the disputed property, allege that respondents are unlawfully claiming the disputed property by using void documents, namely the "Catulagan" and the Deed of Waiver of Rights. **However, the records reveal that petitioners do not have legal or equitable title over the disputed property, which forms part of Lot 43, a public land within the Baguio Townsite Reservation. It is clear from the facts of the case that petitioners' predecessors-in-interest, the heirs of Pocdo Pool, were not even granted a Certificate of Ancestral Land Claim over Lot 43, which remains public land. Thus, the trial court had no other recourse but to dismiss the case.**[33] (Emphases and underscoring supplied)

In conclusion, RTC Br. 61 has no jurisdiction over Civil Case No. 5881-R as the plaintiffs therein (herein respondents) seek to quiet title over lands which belong to the public domain. Necessarily, Civil Case No. 5881-R must be dismissed on this ground. It should be stressed that the court *a quo*'s lack of subject matter jurisdiction over the case renders it without

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[33] *Id.* at 223-225.

authority and necessarily obviates the resolution of the merits of the case. To reiterate, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action, as any act it performs without jurisdiction is null and void, and without any binding legal effects. In this light, the Court finds no further need to discuss the other grounds relied upon by petitioners in this case.

WHEREFORE, the petition is **GRANTED**. The Decision dated March 19, 2009 and the Resolution dated September 3, 2009 of the Court of Appeals in CA-G.R. CV No. 86266 are hereby **REVERSED** and **SET ASIDE**. Accordingly, Civil Case No. 5881-R is **DISMISSED** on the ground of lack of jurisdiction on the part of the Regional Trial Court of Baguio City, Branch 61.

SO ORDERED.

Sereno, C.J. (*Chairperson*), *Leonardo-de Castro, del Castillo,* and *Caguioa, JJ.,* concur.

THIRD DIVISION

[G.R. No. 203492. April 24, 2017]

PABLO AND PABLINA MARCELO-MENDOZA, *petitioners, vs.* **PEROXIDE PHILS., INC., herein represented by ROBERT R. NAVERA**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; REQUISITES.— "A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts." "It is the 'strong arm of equity,' an extraordinary peremptory remedy that must be used with extreme caution, affecting as it does the respective rights of the parties."

The sole purpose of which is to preserve the status *quo* until the merits of the main case can be heard. It is usually granted to prevent a party from committing an act, or threatening the immediate commission of an act that will cause irreparable injury or destroy the status *quo*. Before a Writ of Preliminary Injunction (WPI) may be issued, the concurrence of the following essential requisites must be present, namely: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage. While a clear showing of the right is necessary, its existence need not be conclusively established. Hence, to be entitled to the writ, it is sufficient that the complainant shows that he has an ostensible right to the final relief prayed for in his complaint. [Thus,] a WPI may be issued only after a clear showing that there exists a right to be protected and that the act against which the writ is to be directed are violative of an established right. The holding of a hearing, where both parties can introduce evidence and present their side, is also required before the courts may issue a Temporary Restraining Order (TRO) or an injunctive writ.

2. ID.; ID.; ID.; MAY BE AVAILED OF FOR ACTS CONTINUING IN NATURE AND WERE IN DEROGATION OF RIGHTS; PURPOSE IS TO RESTORE *STATUS QUO*, NOT TO DISPOSE OF THE MAIN CASE; CASE AT BAR.— It may be argued that the dispossession of PPI is already a consummated act. However, it is a settled rule that even if the acts complained of have already been committed, but such acts are continuing in nature and were in derogation of PPI's rights at the outset, preliminary mandatory injunction may be availed of to restore the parties to the status *quo*. Furthermore, the restoration of PPI to the possession of the subject property is not tantamount to the disposition of the main case. The Court is simply of the impression that based on the parties' presentations of their cases, there appears a probable violation of PPI's rights and the injury it has been suffering due to that violation is grave, serious and beyond pecuniary estimation. PPI's restoration to possession pending litigation is a mere provisional remedy and is not determinative of the question of validity of the petitioners' titles which is the main issue in this case.

3. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; UNDUE DELAY IN THE DISPOSITION OF CASES

AND MOTIONS ERODES THE FAITH AND CONFIDENCE OF THE PEOPLE IN THE JUDICIARY AND UNNECCESSARILY BLEMISHES ITS STATURE.— The Court has repeatedly emphasized that undue delay in the disposition of cases and motions erodes the faith and confidence of the people in the Judiciary and unnecessarily blemishes its stature. In *Biggel v. Judge Pamintuan*, the Court held that: There should be no more doubt that undue inaction on judicial concerns is not just undesirable but more so detestable especially now when our all-out effort is directed towards minimizing, if not totally eradicating the perennial problem of congestion and delay long plaguing our courts. The requirement that cases be decided within the reglementary period is designed to prevent delay in the administration of justice, for obviously, justice delayed is justice denied. An unwarranted slow down in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute.

APPEARANCES OF COUNSEL

Aceron Punzalan Vehemente Avila & Del Prado Law Offices for respondent Rene Figueroa.

Philip L. De Claro for respondent.

D E C I S I O N

REYES, *J.*:

Assailed in this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated May 21, 2012 and Resolution[3] dated September 12, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 122366, which revoked and vacated the Omnibus Order[4] dated June 22, 2011 of the

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[1] *Rollo*, pp. 3-42.

[2] Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison concurring; *id*. at 47-78.

[3] *Id*. at 113-114.

[4] Rendered by Judge Jose G. Paneda; *id*. at 157-163.

Regional Trial Court (RTC) of Quezon City, Branch 220, in Civil Case No. Q-95-24760.

The Facts

This case stemmed from an ejectment case filed by Pablo Marcelo (Pablo) and Pablina Marcelo-Mendoza (collectively, the petitioners) against respondent Peroxide Phils., Inc. (PPI), docketed as Civil Case No. 3916 and was raffled to Metropolitan Trial Court (MeTC) of Valenzuela City, Branch 82.[5]

As records show, on June 25, 1971, Gregorio Marcelo, the father and predecessor-in-interest of the petitioners, executed a Contract of Lease[6] with PPI over a parcel of land covered by Transfer Certificate of Title No. T-71843 (subject property) located in the barrio of Paso de Blas, Municipality of Valenzuela, Province of Bulacan.[7]

On July 18, 1988, the MeTC issued its Decision ordering PPI to vacate the subject property and pay the amount of ₱1,864,685.38. Accordingly, upon motion, the MeTC issued an Order dated June 2, 1995 granting the issuance of a writ of execution.[8]

On June 16, 1995, Affidavits of Third-Party Claims of United Energy Corporation and Springfield International, Inc. (third-party claimants) were filed with the sheriff.[9]

Ultimately, on August 3, 1995, the sheriff conducted a public auction and sold for ₱2 Million to Pablo, as the highest bidder, the levied properties of PPI that were found inside the subject property.[10]

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[5] *Id.* at 53.

[6] *Id.* at 213-215.

[7] *Id.* at 50-51.

[8] *Id.* at 53.

[9] *Id.* at 54.

[10] *Id.*

Aggrieved, the third-party claimants filed a complaint with the RTC of Quezon City, docketed as Civil Case No. Q-93-24760, to declare void the sheriff's sale and Certificate of Sale with prayer for a temporary restraining order (TRO) and a writ of preliminary injunction (WPI).[11]

In an Amended Complaint[12] dated October 15, 2001, the third-party claimants added PPI as a party-plaintiff and prayed further for the declaration of PPI's ownership over the improvements erected and/or introduced on the subject property.

On September 8, 1995, a WPI was issued by then Presiding Judge Pedro T. Santiago (Presiding Judge Santiago).[13]

Pablo then challenged the issuance of the WPI by petition for *certiorari* before the CA and later before this Court in G.R. No. 127271, where the Court upheld the validity of the WPI.[14]

Meanwhile, the deputy sheriff of the RTC of Quezon City padlocked the gate of the subject property. Pablo, however, forcibly opened the gate and brought out dismantled machineries of PPI.[15]

On October 4, 2000, the court *a quo*, now thru Judge Teodoro A. Bay, issued an Order to re-padlock the subject property. A motion for reconsideration was filed by Pablo but the same was denied.[16]

Again, upon seeing the gate re-padlocked, Pablo ordered his men to tear down the gate. Thereafter, Pablo occupied and took possession of the entire subject property and opened the same as a resort with swimming pools to the public for a fee with portions of the building rented to several businesses.[17]

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[11] *Id.* at 55.

[12] *Id.* at 328-344.

[13] *Id.* at 55.

[14] *Id.* at 56.

[15] *Id.*

[16] *Id.* at 57-58.

[17] *Id.* at 58-59.

On May 31, 2005, PPI filed an Omnibus Motion alleging specific acts that were characterized as violative of the court's injunction.[18]

On February 20, 2006, the court *a quo*, this time through herein Judge Jose G. Paneda (Judge Paneda), issued an Order granting the reliefs prayed for in the Omnibus Motion,[19] to wit:

> WHEREFORE, in view of the foregoing, the Omnibus Motion is GRANTED. The deputy Sheriff is hereby ordered to conduct an inventory and the defendant to re-padlock the premises and allow the appraiser to enter the same and conduct an inventory of properties and improvements.[20]

Considering that the order was not complied with, PPI was again constrained to file a motion to direct the sheriff to re-padlock the subject property which was granted by the RTC in its Order[21] dated June 19, 2009. Hence, a Notice to Vacate was served by the deputy sheriff of the RTC to Pablo asking him to voluntarily turn over the subject property within five days from receipt thereof.[22]

For several days, Pablo refused to obey the court's order. Finally, on August 3, 2009, Pablo was forced out of the subject property. Immediately thereafter, or on August 4, 2009, Pablo filed a Motion for Reconsideration/Quash the Order dated June 19, 2009. Also, Pablo filed on July 27, 2010 another motion denominated as Motion to Remove Padlock on the Gate of the Land Owned[23] by the petitioners.[24]

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[18] *Id*. at 59.

[19] *Id*. at 59-60.

[20] *Id*. at 60.

[21] *Id*. at 121-122.

[22] *Id*. at 60-62.

[23] *Id*. at 115-120.

[24] *Id*. at 62-63.

On April 4, 2011, PPI filed a Motion for Ocular Inspection,[25] which was eventually granted by the court *a quo* in an Order dated May 9, 2011 and was set on May 20, 2011.[26]

On May 25, 2011, the PPI filed a Motion for Clarification/ Motion to Hold in Abeyance Ocular Inspection considering that no particular time was stated for the inspection. On the same day, the court personally served to PPI an Order re-setting the ocular inspection to May 31, 2011. Thereafter, the ocular inspection was again re-set to June 8, 2011. Aggrieved, on June 8, 2011, PPI filed a Motion for Reconsideration and Inhibition.[27]

On June 22, 2011, the RTC issued an Omnibus Order[28] denying PPI's Motion for Reconsideration and Inhibition, and granting the petitioners' motion to remove padlock on the gate of the subject property. The dispositive portion reads:

> **WHEREFORE**, premises considered, the Motion for Inhibition is **DENIED**. The Motion for Reconsideration is likewise **DENIED** for being moot and academic and the Motion to Remove Padlock of the gates of the land owned by the defendant is **GRANTED**. The Order dated June 19, 2009 is hereby recalled and [Pablo] is hereby allowed to enter the premises and enjoy possession thereof. The parties are hereby restored to their original position as they were, before the issuance of the Order dated June 19, 2009 without prejudice to the case pending before this Court.
>
> The Deputy Sheriff of this Court is hereby ordered to place a cordon around the [PPI] building to ensure inaccessibility thereto.
>
> Furnish the parties, counsels and the Deputy Sheriff of this Court of the copy of this Order for strict implementation under pain of contempt for failure to comply.
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> **SO ORDERED**.[29]

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[25] *Id*. at 123-128.

[26] *Id*. at 63-64.

[27] *Id*. at 64-65.

[28] *Id*. at 157-163.

[29] *Id*. at 162-163.

Aggrieved, on June 30, 2011, PPI filed a motion for reconsideration.[30] Considering, however that no resolution has yet been promulgated by the presiding judge after the lapse of a considerable period of five months, PPI elevated the case before the CA attributing grave abuse of discretion and abuse of authority on the part of Judge Paneda.[31]

On May 21, 2012, the CA, in its Decision,[32] granted the petition and rendered the adverse decision under review, to wit:

> **WHEREFORE**, in view of the foregoing, the petition for certiorari is hereby **GRANTED**. The Omnibus Order dated June 22, 2011 is hereby **REVOKED** and **VACATED**. The Deputy Sheriff of the [RTC] of Quezon City, Branch 204 is hereby directed to turn over possession of the subject premises located at Maysan Road, Barangay Paso de Blas, Valenzuela City, to [PPI], for the latter to continue with the retrieval of its properties. Immediately after said process, [PPI] is ordered to turn over possession of the premises to the court's custody and the same shall be re-padlocked and remain PADLOCKED pending the trial of the main case and until the trial court shall have determined the rights and obligations of the parties in its Decision.
>
> Furthermore, [Judge Paneda] is hereby ordered to inhibit himself from sitting as presiding judge in Civil Case No. Q-95-24760. Let this case be raffled to another branch of the [RTC] of Quezon City for continuation of the proceedings and considering the period of time within which this case has remained pending, the Judge to whom this case will be raffled off is exhorted to conclude this case with dispatch.
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> **SO ORDERED**.[33]

The CA held that Judge Paneda acted with grave abuse of discretion and authority when he promulgated the assailed Omnibus Order dated June 22, 2011, as the said order in effect intends to legitimize the unacceptable defiance and disrespect

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[30] *Id*. at 164-176.

[31] *Id*. at 65.

[32] *Id*. at 47-78.

[33] *Id*. at 76-77.

of Pablo to the court's authority and its lawful orders. According to the CA:

> In fine, We find for [PPI] and uphold its position that the motions filed by [Pablo] to question the ruling of the court a quo on the possession over the subject premises are mere motions for reconsideration of a final order directing that the subject premises be padlocked pending litigation.
>
> The assailed Omnibus Order dated June 22, 2011 gave due course to a motion for reconsideration of an Order which had attained finality several years ago. Giving due course to similar motions had unduly delayed the trial in the main case. To continue entertaining similar motions will further unduly delay the proceedings of this case which was initially filed 17 years ago.[34]

Upset by the foregoing disquisition, the petitioners moved for reconsideration[35] but it was denied in the CA Resolution[36] dated September 12, 2012. Hence, the present petition for review on *certiorari*.

The Issue

WHETHER OR NOT THE CA ERRED IN FINDING THAT THE RTC COMMITTED GRAVE ABUSE OF DISCRETION IN GRANTING THE PETITIONERS' MOTION TO REMOVE THE PADLOCK OF THE SUBJECT PROPERTY.

Ruling of the Court

The petition is bereft of merit.

The resolution of the issue of whether the CA erred in finding that the RTC committed grave abuse of discretion in granting the petitioners' motion to remove the padlock of the subject property boils down to the propriety of the issuance of the WPI.

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[34] *Id.* at 73-74.

[35] *Id.* at 79-96.

[36] *Id.* at 113-114.

At the outset, the Court noted that Pablo had already challenged the WPI before the CA and later before this Court in G.R. No. 127271, where the Court sustained the validity of the WPI then issued by Presiding Judge Santiago.

What is also uncontroverted is the absolute audacity of Pablo to the legitimate orders of the lower court in numerous occasions that is too long to be ignored, which appallingly has gone unpunished and uncorrected.

The petitioners' sole argument is premised on the fact that since they are the registered owners of the subject property, then the lower courts do not have legal basis in ordering that the subject property be turned over to PPI and the same be padlocked pending trial of the main case.

On the other hand, PPI anchors its claim on the following provisions in the Contract of Lease which induced it to introduce and put up various improvements[37] in the subject property, to wit:

> c) That after the termination of this agreement, the LESSEE shall remain the owner of all the improvements thereon erected and/or introduced by it, but that should the LESSEE decide to sell the improvements thereon erected and/or introduced and existing at the termination of this agreement, priority shall be given to the LESSOR;
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> x x x x x x x x x

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[37] a) First removal of soft soil of the rice fields, back filling with escombro (adobe) and paving with reinforced concrete most of the 17,837 meters [sic] lot, to render it fit for the construction of factory building with plant equipments [sic] thereon;

b) The putting up of a complete [sic, should have been concrete] perimeter fence;

c) Erection of a nine-stories [sic] reinforced process building AG & P;

d) Construction of two additional factory building;

e) Introducing facilities such as electrical system including its own power substation, water and fuel tanks, reservoir and deep wells for water supply. *Id*. at 52-53.

3) The LESSOR on the other hand covenants with the LESSEE as follows:

a) To authorize and enable the LESSEE to erect buildings, factories and/or machineries as the latter may deem fit and necessary in the pursuit of its business, but that the LESSEE shall be liable and answerable for any defects that may be found therein;

b) That during the existence or after the termination of this lease, the LESSOR, should he decide to sell the property leased, shall first offer the same to the LESSEE, and the latter has the priority to buy under similar conditions.

x x x x x x x x x[38]

In this case, the Court finds the grant of injunction, as well as the order to padlock and re-padlock the subject property, to be in order.

"A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts."[39] "It is the 'strong arm of equity,' an extraordinary peremptory remedy that must be used with extreme caution, affecting as it does the respective rights of the parties."[40] The sole purpose of which is to preserve the status *quo* until the merits of the main case can be heard.[41] It is usually granted to prevent a party from committing an act, or threatening the immediate commission of an act that will cause irreparable injury or destroy the status *quo*.[42]

Before a WPI may be issued, the concurrence of the following essential requisites must be present, namely: (a) the invasion

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[38] *Id*. at 214.

[39] *Co, Sr. v. Philippine Canine Club, Inc.,* G.R. No. 190112, April 22, 2015, 757 SCRA 147, 155.

[40] *BPI v. Judge Hontanosas, Jr., et al.*, 737 Phil. 38, 53 (2014).

[41] *Co, Sr. v. Philippine Canine Club, Inc., supra* note 39.

[42] *Id*.

of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage. While a clear showing of the right is necessary, its existence need not be conclusively established. Hence, to be entitled to the writ, it is sufficient that the complainant shows that he has an ostensible right to the final relief prayed for in his complaint.[43]

From the foregoing, it appears clearly that a WPI may be issued only after a clear showing that there exists a right to be protected and that the act against which the writ is to be directed are violative of an established right. The holding of a hearing, where both parties can introduce evidence and present their side, is also required before the courts may issue a TRO or an injunctive writ.[44]

Under the factual setting of this case, PPI was able to sufficiently establish that it had a right over the properties which should be protected while being litigated. PPI's claimed ownership over the improvements erected and/or introduced in the subject property was then being violated by the petitioners who had started entering the premises and started dismantling the improvements and machineries thereon. Worse, the petitioners even opened the subject property as a resort with swimming pools to the public for a fee and had portions of the buildings inside the premises rented to several businesses. If not lawfully stopped, such acts of the petitioners would certainly cause irreparable damage to PPI and other claimants. As owner of the improvements and machineries inside the subject property, PPI has the right to be protected. Hence, the issuance by the lower courts of the WPI and the order to padlock and re-padlock the subject property to enjoin the petitioners from disposing the properties of PPI was warranted.

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[43] *Lukang v. Pagbilao Development Corporation, et al.*, 728 Phil. 608, 617-618 (2014).

[44] *China Banking Corporation v. Spouses Ciriaco*, 690 Phil. 480, 488 (2012).

Undeniably, it is evident from the records of the case that the injunction issued was intended to protect the rights and interests of PPI and other claimants over machineries and equipment of substantial value that were gradually being brought out from the subject property, as shown by the Sheriff's Reports after the inventories conducted at different dates. The findings of the CA on this matter are informative:

> It is evident from the comparison of the inventories conducted by different sheriffs on: a) June 15, 1995, together with Notice of Sheriff's Sale on Execution of Corporation Properties dated June 16, 1995; b) March 23, 2000 together with Sheriff's Report dated March 31, 2000; and, c) July 28, 2009 in relation to Sheriff's Report dated August 24, 2009; that the properties of petitioner housed in the [PPI] buildings were diminishing in time and eventually gone except for a cooling machine located in building 1 and a drum making machine located in building 2.
>
> All this time, [Pablo] occupied the [PPI] premises when he was not allowed by the injunction and the subsequent orders of the court to be there. The allegation of [PPI] that [Pablo] removed the padlock on the gate of the premises of the [PPI] compound and eventually tore out the entire gate was never disputed by [Pablo] in his Comment. x x x.[45] (Citations omitted)

The Court also noted that the issue of possession of the subject property pending litigation has been resolved by the lower court under different judges in the Orders dated October 4, 2000, February 8, 2001, February 20, 2006, August 24, 2007 and June 19, 2009, all categorically commanding that the gates of the subject property be padlocked.[46] Hence, the Court is convinced that a special reason, supported by facts borne by the records of this case, exists to justify the injunction and its subsequent orders in relation thereto.

It may be argued that the dispossession of PPI is already a consummated act. However, it is a settled rule that even if the acts complained of have already been committed, but such acts

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[45] *Rollo*, pp. 71-72.

[46] *Id.* at 72-73.

are continuing in nature and were in derogation of PPI's rights at the outset, preliminary mandatory injunction may be availed of to restore the parties to the status *quo*.[47]

Furthermore, the restoration of PPI to the possession of the subject property is not tantamount to the disposition of the main case. The Court is simply of the impression that based on the parties' presentations of their cases, there appears a probable violation of PPI's rights and the injury it has been suffering due to that violation is grave, serious and beyond pecuniary estimation. PPI's restoration to possession pending litigation is a mere provisional remedy and is not determinative of the question of validity of the petitioners' titles which is the main issue in this case.

As to the matter of inhibition, the Court sustains the findings of the CA that it is for the best interest of both parties that Judge Paneda inhibits himself from the case to preserve the integrity of the court especially after going through this *certiorari* proceeding.

A perusal of the records of the case showed that Judge Paneda failed to act on PPI's motion for reconsideration for almost eight months. Evidently, Judge Paneda's failure to act with dispatch constitutes undue delay.

The Court has repeatedly emphasized that undue delay in the disposition of cases and motions erodes the faith and confidence of the people in the Judiciary and unnecessarily blemishes its stature.[48]

In *Biggel v. Judge Pamintuan*,[49] the Court held that:

> There should be no more doubt that undue inaction on judicial concerns is not just undesirable but more so detestable especially now when our all-out effort is directed towards minimizing, if not totally eradicating the perennial problem of congestion and delay

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[47] *Sps. Sarmiento, et al. v. Sps. Magsino*, 719 Phil. 573, 580 (2013).

[48] *Biggel v. Judge Pamintuan,* 581 Phil. 319, 324-325 (2008).

[49] 581 Phil. 319 (2008).

long plaguing our courts. The requirement that cases be decided within the reglementary period is designed to prevent delay in the administration of justice, for obviously, justice delayed is justice denied. An unwarranted slow down in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute.[50] (Citation omitted)

From the foregoing disquisition, it is evident that an injunction, as well as the lower courts' orders to padlock and re-padlock the subject property, is in order to preserve and protect the rights of PPI and other claimants during the pendency of the main case. Thus, the Court finds no cogent reason to annul the findings and conclusions of the CA.

WHEREFORE, the petition is **DENIED**. The Decision dated May 21, 2012 and Resolution dated September 12, 2012 of the Court of Appeals in CA-G.R. SP No. 122366 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Jardeleza,* and *Tijam, JJ.,* concur.

FIRST DIVISION

[G.R. No. 205998. April 24, 2017]

WILLIAM ANGHIAN SIY, *petitioner, vs.* **ALVIN TOMLIN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; REPLEVIN; CLAIMANT MUST SHOW THAT HE IS EITHER THE

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[50] *Id*. at 325.

OWNER OR CLEARLY ENTITLED TO THE POSSESSION OF THE OBJECT SOUGHT TO BE RECOVERED .— "In a complaint for replevin, the claimant must convincingly show that he is either the owner or clearly entitled to the possession of the object sought to be recovered, and that the defendant, who is in actual or legal possession thereof, wrongfully detains the same." "Rule 60 x x x allows a plaintiff, in an action for the recovery of possession of personal property, to apply for a writ of replevin if it can be shown that he is 'the owner of the property claimed . . . or is entitled to the possession thereof.' The plaintiff need not be the owner so long as he is able to specify his right to the possession of the property and his legal basis therefor."

2. **CIVIL LAW; SPECIAL CONTRACTS; AGENCY; IMPLIED AGENCY; PRINCIPAL BOUND BY THE ACTS OF THE IMPLIED AGENT; CASE AT BAR.—** From petitioner's own account, he constituted and appointed Ong as his agent to sell the vehicle, surrendering to the latter the vehicle, all documents of title pertaining thereto, and a deed of sale signed in blank, with full understanding that Ong would offer and sell the same to his clients or to the public. In return, Ong accepted the agency by his receipt of the vehicle, the blank deed of sale, and documents of title, and when he gave bond in the form of two guarantee checks worth ₱4.95 million. All these gave Ong the authority to act for and in behalf of petitioner. Under the Civil Code on agency, **Art. 1869**. Agency **may be express, or implied** from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority. Agency **may be oral**, unless the law requires a specific form. **Art. 1870**. **Acceptance by the agent may also be express, or implied from his acts** which carry out the agency, or from his silence or inaction according to the circumstances. x x x "The basis of agency is representation and the same may be constituted expressly or impliedly. In an implied agency, the principal can be bound by the acts of the implied agent." The same is true with an oral agency. Acting for and in petitioner's behalf by virtue of the implied or oral agency, Ong was thus able to sell the vehicle to Chua, but he failed to remit the proceeds thereof to petitioner; his guarantee checks bounced as well. This entitled petitioner to sue for estafa through abuse of confidence [against Ong]. x x x [But] [s]ince Ong was able to sell the subject vehicle

> to Chua, petitioner thus ceased to be the owner thereof; x x x petitioner lost his right of possession over the vehicle. x x x [I]ndeed, his right of action is only against Ong, for collection of the proceeds of the sale. x x x [P]etitioner may not seek a return of the [subject vehicle] through replevin.

APPEARANCES OF COUNSEL

Scot Law Firm for petitioner.
Quiazon Makalintal Barot Torres Ibarra & Sison for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the October 9, 2012 Decision[2] and February 19, 2013 Resolution[3] of the Court of Appeals (CA) which respectively granted the respondent's Petition for *Certiorari* and denied petitioner's Motion for Reconsideration[4] in CA-G.R. SP No. 124967.

Factual Antecedents

In July, 2011, petitioner William Anghian Siy filed before the Regional Trial Court of Quezon City (RTC) a Complaint for Recovery of Possession with Prayer for Replevin[5] against Frankie Domanog Ong (Ong), Chris Centeno (Centeno), John Co Chua (Chua), and herein respondent Alvin Tomlin. The case was docketed as Civil Case No. Q-11-69644 and assigned to RTC Branch 224.

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[1] *Rollo*, pp. 12-37.

[2] *Id*. at 42-52; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon.

[3] *Id*. at 39-40.

[4] *Id*. at 274-287.

[5] *Id*. at 62-71.

In his Complaint, petitioner alleged that he is the owner of a 2007 model Range Rover with Plate Number ZMG 272 which he purchased from Alberto Lopez III (Lopez) on July 22, 2009; that in 2010, he entrusted the said vehicle to Ong, a businessman who owned a second-hand car sales showroom ("Motortrend" in Katipunan, Quezon City), after the latter claimed that he had a prospective buyer therefor; that Ong failed to remit the proceeds of the purported sale nor return the vehicle; that petitioner later found out that the vehicle had been transferred to Chua; that in December, 2010, petitioner filed a complaint before the Quezon City Police District's Anti-Carnapping Section; that Ong, upon learning of the complaint, met with petitioner to arrange the return of the vehicle; that Ong still failed to surrender the vehicle; that petitioner learned that the vehicle was being transferred to respondent; and that the vehicle was later impounded and taken into custody by the PNP-Highway Patrol Group (HPG) at Camp Crame, Quezon City after respondent attempted to process a PNP clearance of the vehicle with a view to transferring ownership thereof. Petitioner thus prayed that a writ of replevin be issued for the return of the vehicle to him, and that the defendants be ordered to pay him ₱100,000.00 attorney's fees and the costs of suit.

After hearing the application, the trial court issued a July 29, 2011 Order[6] decreeing as follows:

> WHEREFORE, in view of the foregoing, and with the ADMISSION of the plaintiff's Documentary Exhibits in support of this Application, issue a Writ of Replevin in favor of the plaintiff subject to the posting of the bond in the amount of EIGHT MILLION PESOS (Php8,000,000.00) to be executed in favor of the defendants for the return of the said property if such return be adjudged, and for the payment to the adverse parties of such sum as they may recover from the applicant in this action.
>
> SO ORDERED.[7]

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[6] *Id*. at 91-92; penned by Presiding Judge Tita Marilyn Payoyo-Villordon.

[7] *Id*. at 92.

Petitioner posted the required ₱8 million bond[8] which was approved by the trial court.[9] A Writ of Replevin[10] was then issued.

The subject vehicle was seized by the court-appointed special sheriff who then filed the corresponding Sheriff's Return.[11]

On August 17, 2011, respondent filed an Omnibus Motion[12] seeking to quash the Writ of Replevin, dismiss the Complaint, and turn over or return the vehicle to him. Respondent claimed that he is the lawful and registered owner of the subject vehicle, having bought the same and caused registration thereof in his name on March 7, 2011; that the Complaint in Civil Case No. Q-11-69644 should be dismissed for failure to pay the correct amount of docket fees; that the Complaint is defective for failing to allege the correct and material facts as to ownership, possession/detention by defendant, warranty against distraint/levy/seizure, and actual value of the vehicle; and that the implementation of the writ was attended by procedural irregularities.

Particularly, respondent argued that petitioner could not prove his ownership of the vehicle as the only pieces of evidence he presented in this regard were a manager's check and cash voucher as proof of payment, and the affidavit of Lopez attesting to the sale between him and petitioner which are insufficient; that in fact, he is the registered owner of the vehicle, as shown by the Official Receipt and Certificate of Registration[13] dated March 7, 2011 issued in his name by the Land Transportation Office (LTO); that it has not been shown that he wrongfully detained the vehicle, as petitioner was never in possession thereof, since the same was already detained and seized by the HPG at the

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[8] *Id.* at 93.

[9] *Id.* at 94.

[10] *Id.* at 95-96.

[11] *Id.* at 99-100.

[12] *Id.* at 101-134.

[13] *Id.* at 397-398.

time; that petitioner failed to allege, as required under Section 2 of Rule 60 of the 1997 Rules of Civil Procedure[14] (1997 Rules), that the vehicle has not been distrained or taken for a tax assessment or a fine pursuant to law, or seized under a writ of execution or preliminary attachment, or otherwise placed under *custodia legis*, or if so seized, that it is exempt from such seizure or custody; and that petitioner failed to allege the actual market value (₱4 million) of the vehicle, and instead, he intentionally understated its value at only ₱2 million in order to avoid paying the correct docket fees.

As for the alleged procedural defects, respondent claimed that the sheriff implemented the writ against the HPG, which is not a party to the case; that the Complaint must be dismissed for failure to pay the correct docket fees based on the actual value of the vehicle; and that the trial court acted with undue haste in granting the writ of replevin.

Finally, respondent argued that he is the true owner of the subject vehicle as he was able to register the transfer in his favor and obtain a certificate of registration in his name; and that as between petitioner's documentary evidence and his official registration documents, the latter should prevail.

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[14] Sec. 2. Affidavit and bond. – The applicant must show by his own affidavit or that of some other person who personally knows the facts:

(a) That the applicant is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof;

(b) That the property is wrongfully detained by the adverse party, alleging the cause of detention thereof according to the best of his knowledge, information, and belief;

(c) That the property has not been distrained or taken for a tax assessment or a fine pursuant to law, or seized under a writ of execution or preliminary attachment, or otherwise placed under *custodia legis*, or if so seized, that it is exempt from such seizure or custody; and

(d) The actual market value of the property.

The applicant must also give a bond, executed to the adverse party in double the value of the property as stated in the affidavit aforementioned, for the return of the property to the adverse party if such return be adjudged, and for the payment to the adverse party of such sum as he may recover from the application in the action.

Petitioner filed his Opposition/Comment[15] to the omnibus motion.

Ruling of the Regional Trial Court

On November 21, 2011, the trial court issued an Order[16] denying respondent's Omnibus Motion for lack of merit. It held that respondent's remedy is not to move to quash the writ of replevin, but to post a counterbond within the reglementary period allowed under the 1997 Rules; that for failure to post said counterbond, respondent's prayer for the return of the vehicle to him is premature; that the issues of ownership and insufficiency of the allegations in the complaint are best determined during trial; and that an allegation of undervaluation of the vehicle cannot divest the court of jurisdiction.

Respondent moved for reconsideration, but he was rebuffed just the same.

Ruling of the Court of Appeals

Respondent filed a Petition for *Certiorari*[17] before the CA docketed as CA-G.R. SP No. 124967 claiming as he did in his Omnibus Motion that the trial court should have dismissed Civil Case No. Q-11-69644 on account of failure to pay the correct docket fees, defective complaint, procedural irregularities in the service of the writ of replevin, the fact that he is the registered owner of the subject vehicle, and for the reason that the trial court irregularly took cognizance of the case during the period for inventory of its cases. Respondent sought injunctive relief as well.

On October 9, 2012, the CA rendered the assailed Decision granting the Petition. It held that the trial court did not acquire jurisdiction over the instant case for failure of petitioner to pay the correct docket fees, since petitioner misdeclared the

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[15] *Rollo*, pp. 137-171.

[16] *Id.* at 195-198.

[17] *Id.* at 201-245.

value of the subject vehicle at only ₱2 million in his Complaint, when the market value thereof was around ₱4.5 million to ₱5 million; that this misdeclaration was undertaken with the clear intention to defraud the government; and that petitioner failed to comply with the requirements under Section 2, Rule 60 of the 1997 Rules, in that he gave a grossly inadequate value for the subject vehicle in the Complaint and failed to allege therein that the vehicle has not been distrained or taken for a tax assessment or a fine pursuant to law, or seized under a writ of execution or preliminary attachment, or otherwise placed under *custodia legis*.

The CA added that it was improper for the sheriff to serve a copy of the writ of replevin upon the respondent on the day following the seizure of the subject vehicle, and not prior to the taking thereof; that the trial court is deemed to have acted without or in excess of its jurisdiction when it seized and detained the vehicle on the basis of an improperly served writ; and that respondent was correct in moving to quash the writ, as the proper remedy in case of an improperly served writ of replevin is to file a motion to quash the same or a motion to vacate the order of seizure, and not to file a counterbond as the trial court declared.

The CA thus decreed:

WHEREFORE, premises considered, the instant Petition for *Certiorari* is hereby GRANTED with the following effects:

1) [T]he Order dated 21 November 2011 rendered by the Regional Trial Court of Quezon City, Branch 224 is REVERSED and SET ASIDE;

2) [T]he Order dated 13 March 2012 similarly rendered by the Regional Trial Court of Quezon City, Branch 224 is REVERSED and SET ASIDE;

3) Civil Case No. Q-11-69644 pending before the Regional Trial Court of Quezon City, Branch 224 is hereby DISMISSED for want of jurisdiction;

4) The subject Range Rover with plate number ZMG 272 should be RETURNED to the Philippine National Police-Highway Patrol Group for its proper disposition and finally;

5) Prayer for the Issuance of Temporary Restraining Order and/or Preliminary Injunction is DENIED for being moot and academic.

SO ORDERED.[18]

Petitioner moved to reconsider, but in its assailed February 19, 2013 Resolution, the CA remained unconvinced. Hence, the present Petition.

In a November 10, 2014 Resolution,[19] this Court resolved to give due course to the Petition.

Issues

Petitioner pleads the following assignment of errors:

I.

WHETHER X X X THE TRIAL COURT HAS ACQUIRED JURISDICTION OVER THE SUBJECT MATTER OF THE COMPLAINT FOR RECOVERY OF POSSESSION WITH PRAYER FOR REPLEVIN.

II.

WHETHER X X X THE PETITIONER FAILED TO ALLEGE ALL THE MATERIAL FACTS IN THE COMPLAINT FOR REPLEVIN AND AFFIDAVIT OF MERIT UNDER SECTIONS 2 & 4, RULE 60 OF THE REVISED RULES OF COURT.

III.

WHETHER X X X THE SHERIFF PROPERLY IMPLEMENTED THE WRIT OF REPLEVIN BY SERVING THE SAME TO ANY PERSON WHO IS IN POSSESSION OF THE PROPERTY SUBJECT THEREOF.[20]

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[18] *Id*. at 51.

[19] *Id*. at 435-436.

[20] *Id*. at 27.

Petitioner's Arguments

Praying that the assailed CA dispositions be reversed and set aside and that, instead, Civil Case No. Q-11-69644 be reinstated, petitioner argues that the trial court acquired jurisdiction over the replevin case considering the payment of docket fees based on a valuation of the subject vehicle arrived at in good faith by petitioner, who in estimating the vehicle's value took into consideration various factors such as depreciation, actual condition, year model, and other circumstances; that the payment of an inadequate docket fee is not a ground for dismissal of a case, and the trial court may simply allow the plaintiff to complete the payment of the correct docket fees within a reasonable time;[21] and that his eventual submission to the trial court's valuation of ₱4 million and his willingness to pay the bond and corresponding docket fee proves his good faith and sincerity.

On the issue relating to his supposed defective complaint on account of insufficient allegations made therein, petitioner contends that there is nothing in the 1997 Rules which requires him to copy the requirements in Section 2 of Rule 60 and incorporate them to the letter in his complaint, as the rule merely requires an applicant in replevin to show the circumstances in his complaint or affidavit of merit, which he claims he did.

Finally, petitioner insists that the writ of replevin was properly served upon respondent. He did not address the issue relating to the sheriff's service of summons, the writ of replevin, and the corresponding order of the trial court on the day following the seizure and detention of the subject vehicle, arguing rather sweepingly that it is sufficient for the sheriff to have served respondent with a copy of the writ of replevin, together with the complaint, affidavit, and bond. He conceded that respondent was in constructive possession of the vehicle, as he was the registered owner thereof.

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[21] Citing *Sun Insurance Office, Ltd. v. Judge Asuncion*, 252 Phil. 280 (1989) and *United Overseas Bank v. Judge Ros*, 556 Phil. 178 (2007).

In his Reply,[22] petitioner retorts that the Petition is grounded on questions of law; that even though respondent was able to register the vehicle in his name, he is nonetheless a buyer and possessor in bad faith, and thus, the transfer of ownership over the subject vehicle in his favor is illegal; that a criminal case for estafa relative to the vehicle is pending against Ong, Chua, and Centeno; that Lopez's purported sale to Chua was anomalous; and that respondent should have filed a counterbond.

Respondent's Arguments

In his Comment,[23] respondent essentially counters that the Petition should be dismissed as it raises issues of fact; that a liberal application of the rule requiring the payment of correct docket fees cannot apply to petitioner's case since he intentionally defrauded the court in misdeclaring the value of the subject vehicle; that while they need not be stated *verbatim*, the enumeration of required allegations under Section 2 of Rule 60 must still be specifically included in a complaint for replevin or in the accompanying affidavit of merit; that petitioner failed to show that he is the owner of the vehicle or that he is entitled to its possession, and that the vehicle is wrongfully detained by him, and that it has not been distrained, seized or placed under *custodia legis*; and that he is a buyer in good faith and for value.

Our Ruling

The Petition must be denied.

"In a complaint for replevin, the claimant must convincingly show that he is either the owner or clearly entitled to the possession of the object sought to be recovered, and that the defendant, who is in actual or legal possession thereof, wrongfully detains the same."[24] "Rule 60 x x x allows a plaintiff, in an

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[22] *Rollo*, pp. 410-427.

[23] *Id.* at 302-320.

[24] *Superlines Transportation Company, Inc. v. Philippine National Construction Company*, 548 Phil. 354, 364 (2007).

action for the recovery of possession of personal property, to apply for a writ of replevin if it can be shown that he is 'the owner of the property claimed . . . or is entitled to the possession thereof.' The plaintiff need not be the owner so long as he is able to specify his right to the possession of the property and his legal basis therefor."[25]

In *Filinvest Credit Corporation v. Court of Appeals*,[26] this Court likewise held that –

x x x It is not only the owner who can institute a replevin suit. A person "entitled to the possession" of the property also can, as provided in the same paragraph cited by the trial court, which reads:

> Sec. 2. Affidavit and bond. — Upon applying for such order the plaintiff must show . . .
>
> (a) That the plaintiff is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof; x x x

As correctly cited by respondent in his Comment:[27]

x x x [A] party praying for the recovery of possession of personal property must show by his own affidavit or that of some other person who personally knows the facts that he is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof. It must be borne in mind that replevin is a possessory action the gist of which focuses on the right of possession that, in turn, is dependent on a legal basis that, not infrequently, looks to the ownership of the object sought to be replevied. Wrongful detention by the defendant of the properties sought in an action for replevin must be satisfactorily established. If only a mechanistic averment thereof is offered, the writ should not be issued.[28]

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[25] *BA Finance Corporation v. Court of Appeals*, 327 Phil. 716, 726-727 (1996), citing *Servicewide Specialists, Inc. v. Court of Appeals*, 321 Phil. 427 (1995).

[26] 318 Phil. 653, 669 (1995).

[27] *Rollo*, p. 310.

[28] *Twin Ace Holdings Corporation v. Rufina and Company*, 523 Phil. 766, 779 (2006).

Petitioner admits and claims in his pleadings that on July 22, 2009, he purchased the subject vehicle from Lopez, who executed and signed in blank a deed of sale and surrendered all documents of title to him;[29] that he did not register the sale in his favor, such that the vehicle remained in the name of Lopez;[30] that in September, 2010, he delivered the subject vehicle, together with all its documents of title and the blank deed of sale, to Ong, with the express intention of selling the vehicle through the latter as broker/second hand car dealer; that Ong appears to have issued in his favor two guarantee checks amounting to ₱4.95 million; and that these checks bounced.[31] Thereafter, Ong was able to sell the vehicle using the deed of sale executed and signed in blank by Lopez to Chua, who secured a certificate of registration in his name.[32] Chua then sold the vehicle, via a Deed of Sale of Motor Vehicle dated December 7, 2010, to respondent, who caused registration of the vehicle in his name on March 7, 2011.[33] Apparently, Ong did not remit Chua's payment to petitioner, prompting the latter to file formal complaints/charges for ***1)*** estafa and carnapping on May 18, 2011 before the Office of the City Prosecutor of Quezon City, and ***2)*** carnapping on June 15, 2011 before the PNP-HPG in Camp Crame, Quezon City against Ong and Centeno.[34] It appears as well that prior to the filing of these formal complaints, or sometime in November, 2010, petitioner appeared before the Quezon City Anti-Carnapping Unit based in Camp Karingal, Quezon City and, claiming that the subject vehicle was carnapped, filed a "Failed to Return Vehicle" report; that on February 23, 2011, petitioner, respondent, Ong, and Chua appeared at Camp Karingal to shed light on the claimed carnapping; that the parties were requested to voluntarily surrender the subject vehicle, but

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[29] *Rollo*, pp. 16, 74-75.

[30] *Id*. at 19.

[31] *Id*. at 145, 179, 181.

[32] *Id*. at 387, 389.

[33] *Id*. at 393, 397-398.

[34] *Id*. at 77-82.

the request proved futile; and that petitioner was instead advised to file appropriate charges and file a complaint with the PNP-HPG in order to include the subject vehicle in the "hold order list."

This Court is not unaware of the practice by many vehicle buyers and second-hand car traders of not transferring registration and ownership over vehicles purchased from their original owners, and rather instructing the latter to execute and sign in blank deeds of sale covering these vehicles, so that these buyers and dealers may freely and readily trade or re-sell the vehicles in the second-hand car market without difficulty. This way, multiple transfers, sales, or trades of the vehicle using these undated deeds signed in blank become possible, until the latest purchaser decides to actually transfer the certificate of registration in his name. For many car owners-sellers, this is an easy concession; so long as they actually receive the sale price, they will sign sale deeds in blank and surrender them to the buyers or dealers; and for the latter, this is convenient since they can "flip" or re-sell the vehicles to the public many times over with ease, using these blank deeds of sale.

In many cases as well, busy vehicle owners selling their vehicles actually leave them, together with all the documents of title, spare keys, and deeds of sale signed in blank, with second-hand car traders they know and trust, in order for the latter to display these vehicles for actual viewing and inspection by prospective buyers at their lots, warehouses, garages, or showrooms, and to enable the traders to facilitate sales on-the-spot, as-is-where-is, without having to inconvenience the owners with random viewings and inspections of their vehicles. For this kind of arrangement, an agency relationship is created between the vehicle owners, as principals, and the car traders, as agents. The situation is akin to an owner of jewelry who sells the same through an agent, who receives the jewelry in trust and offers it for sale to his/her regular clients; if a sale is made, the agent takes payment under the obligation to remit the same to the jewelry owner, minus the agreed commission or other compensation.

From petitioner's own account, he constituted and appointed Ong as his agent to sell the vehicle, surrendering to the latter the vehicle, all documents of title pertaining thereto, and a deed of sale signed in blank, with full understanding that Ong would offer and sell the same to his clients or to the public. In return, Ong accepted the agency by his receipt of the vehicle, the blank deed of sale, and documents of title, and when he gave bond in the form of two guarantee checks worth ₱4.95 million. All these gave Ong the authority to act for and in behalf of petitioner. Under the Civil Code on agency,

> **Art. 1869**. Agency **may be express, or implied** from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.
>
> Agency **may be oral**, unless the law requires a specific form.
>
> **Art. 1870**. **Acceptance by the agent may also be express, or implied from his acts** which carry out the agency, or from his silence or inaction according to the circumstances. (Emphasis and underscoring supplied)

"The basis of agency is representation and the same may be constituted expressly or impliedly. In an implied agency, the principal can be bound by the acts of the implied agent."[35] The same is true with an oral agency.

Acting for and in petitioner's behalf by virtue of the implied or oral agency, Ong was thus able to sell the vehicle to Chua, but he failed to remit the proceeds thereof to petitioner; his guarantee checks bounced as well. This entitled petitioner to sue for estafa through abuse of confidence. This is exactly what petitioner did: on May 18, 2011, he filed a complaint for estafa and carnapping against Ong before the Quezon City Prosecutor's Office.

Since Ong was able to sell the subject vehicle to Chua, petitioner thus ceased to be the owner thereof. Nor is he entitled

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[35] *M.V. Casaclang Construction and Supply v. Hora*, G.R. No. 149881, Resolution of the Court dated July 26, 2006.

to the possession of the vehicle; together with his ownership, petitioner lost his right of possession over the vehicle. His argument that respondent is a buyer in bad faith, when the latter nonetheless proceeded with the purchase and registration of the vehicle on March 7, 2011, despite having been apprised of petitioner's earlier November, 2010 "Failed to Return Vehicle" report filed with the PNP-HPG, is unavailing. Petitioner had no right to file said report, as he was no longer the owner of the vehicle at the time; indeed, his right of action is only against Ong, for collection of the proceeds of the sale.

Considering that he was no longer the owner or rightful possessor of the subject vehicle at the time he filed Civil Case No. Q-11-69644 in July, 2011, petitioner may not seek a return of the same through replevin. Quite the contrary, respondent, who obtained the vehicle from Chua and registered the transfer with the Land Transportation Office, is the rightful owner thereof, and as such, he is entitled to its possession. For this reason, the CA was correct in decreeing the dismissal of Civil Case No. Q-11-69644, although it erred in ordering the return of the vehicle to the PNP-HPG, which had no further right to hold the vehicle in its custody. As the registered and rightful owner of the subject vehicle, the trial court must return the same to respondent.

Petitioner cannot be allowed to cut his losses by ostensibly securing the recovery of the subject vehicle in lieu of its price, which Ong failed and continues to fail to remit. On the other hand, Ong's declarations contained in his Affidavit,[36] to the effect that petitioner remains the owner of the vehicle, and that Chua came into illegal possession and ownership of the same by unlawfully appropriating the same for himself without paying for it, are unavailing. Faced with a possible criminal charge for estafa initiated by petitioner for failing or refusing to remit the price for the subject vehicle, Ong's declarations are considered self-serving, that is, calculated to free himself from the criminal charge. The premise is that by helping petitioner to actually

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[36] *Rollo*, pp. 177-178.

recover his vehicle by insisting that the same was unlawfully taken from him, instead of remitting its price to petitioner, Ong expects that he and petitioner may redeem themselves from their bad judgment; for the petitioner, the mistake of bestowing his full faith and confidence upon Ong, and blindly surrendering the vehicle, its documents of title, and a deed of sale executed and signed in blank, to the latter; and for Ong, his failure to remit the proceeds of the sale to petitioner; and petitioner might then opt to desist from pursuing the estafa and other criminal charges against him.

Having disposed of the case in the foregoing manner, there is no need to discuss the other issues raised by the parties.

WHEREFORE, the Petition is **DENIED**. The October 9, 2012 Decision and February 19, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 124967 are **AFFIRMED WITH MODIFICATION**, in that the subject Land Rover Range Rover, with Plate Number ZMG 272 and particularly described in and made subject of these proceedings, is **ORDERED RETURNED** to respondent Alvin Tomlin as its registered owner.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 224764. April 24, 2017]

BUREAU OF INTERNAL REVENUE, ASSISTANT COMMISSIONER ALFREDO V. MISAJON, GROUP SUPERVISOR ROLANDO M. BALBIDO, and EXAMINER REYNANTE DP. MARTIREZ, *petitioners, vs.* **LEPANTO CERAMICS, INC.**, *respondent.*

SYLLABUS

1. **MERCANTILE LAW; REPUBLIC ACT NO. 101142 (FINANCIAL REHABILITATION AND INSOLVENCY ACT [FRIA] OF 2010); CORPORATE REHABILITATION IS DEFINED AS AN ATTEMPT TO CONSERVE AND ADMINISTER THE ASSETS OF AN INSOLVENT CORPORATION IN THE HOPE OF ITS EVENTUAL RETURN FROM FINANCIAL STRESS TO SOLVENCY.—** "[C]ase law has defined corporate rehabilitation as an attempt to conserve and administer the assets of an insolvent corporation in the hope of its eventual return from financial stress to solvency. It contemplates the continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and liquidity."

2. **ID.; ID.; THE INHERENT PURPOSE OF REHABILITATION, EXPLAINED.—** Verily, the inherent purpose of rehabilitation is to find ways and means to minimize the expenses of the distressed corporation during the rehabilitation period by providing the best possible framework for the corporation to gradually regain or achieve a sustainable operating form. "[It] enable[s] the company to gain a new lease in life and thereby allow creditors to be paid [t]heir claims from its earnings. Thus, rehabilitation shall be undertaken when it is shown that the continued operation of the corporation is economically more feasible and its creditors can recover, by way of the present value of payments projected in the plan, more, if the corporation continues as a going concern than if it is immediately liquidated.

3. **ID.; ID.; THE LAW PROVIDES THAT UPON ISSUANCE OF A COMMENCEMENT ORDER ALL ACTIONS OR PROCEEDINGS, IN COURT OR OTHERWISE, FOR THE COMMENCEMENT OF "CLAIMS" AGAINST THE DISTRESSED COMPANY SHALL BE SUSPENDED; CLAIM, CLARIFIED.—** Section 16 of RA 10142 provides, *inter alia*, that upon the issuance of a Commencement Order – which includes a Stay or Suspension Order – all actions or proceedings, in court or otherwise, for the enforcement of "claims" against the distressed company shall be suspended. Under the same law, claim "shall refer to all claims or demands of whatever nature or character against the debtor or its property, whether for money or otherwise, liquidated or unliquidated,

fixed or contingent, matured or unmatured, disputed or undisputed, including, but not limited to; (1) **all claims of the government, whether national or local, including taxes, tariffs and customs duties**; and (2) claims against directors and officers of the debtor arising from acts done in the discharge of their functions falling within the scope of their authority: *Provided,* That, this inclusion does not prohibit the creditors or third parties from filing cases against the directors and officers acting in their personal capacities."

4. ID.; ID.; CREDITORS OF DISTRESSED CORPORATION MUST VENTILATE THEIR CLAIMS BEFORE THE REHABILITATION COURT AND ANY ATTEMPT TO SEEK LEGAL OR OTHER RESOURCE AGAINST THE DISTRESSED CORPORATION SHALL BE SUFFICIENT TO SUPPORT A FINDING OF INDIRECT CONTEMPT OF COURT; CASE AT BAR.— To clarify, however, creditors of the distressed corporation are not without remedy as they may still submit their claims to the rehabilitation court for proper consideration so that they may participate in the proceedings, keeping in mind the general policy of the law "to ensure or maintain certainty and predictability in commercial affairs, preserve and maximize the value of the assets of these debtors, recognize creditor rights and respect priority of claims, and ensure equitable treatment of creditors who are similarly situated." In other words, the creditors must ventilate their claims before the rehabilitation court, and any "[a]ttempts to seek legal or other resource against the distressed corporation shall be sufficient to support a finding of indirect contempt of court." x x x Petitioners' insistence that: (*a*) Misajon, *et al*. only performed such acts to toll the prescriptive period for the collection of deficiency taxes; and (*b*) to cite them in indirect contempt would unduly interfere with their function of collecting taxes due to the government, cannot be given any credence. As aptly put by the RTC Br. 35, they could have easily tolled the running of such prescriptive period, and at the same time, perform their functions as officers of the BIR, without defying the Commencement Order and without violating the laudable purpose of RA 10142 by simply ventilating their claim before the Rehabilitation Court. After all, they were adequately notified of the LCI's corporate rehabilitation and the issuance of the corresponding Commencement Order. In sum, it was improper

for Misajon, *et al*. to collect, or even attempt to collect, deficiency taxes from LCI outside of the rehabilitation proceedings concerning the latter, and in the process, willfully disregard the Commencement Order lawfully issued by the Rehabilitation Court. Hence, the RTC Br. 35 correctly cited them for indirect contempt.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Rondain & Mendiola for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This is a direct recourse to the Court from the Regional Trial Court (RTC) of Calamba City, Province of Laguna, Branch 35 (RTC Br. 35), through a petition for review on *certiorari*,[1] raising a pure question of law. In particular, petitioners Bureau of Internal Revenue (BIR), Assistant Commissioner Alfredo V. Misajon (Misajon), Group Supervisor Rolando M. Balbido (Balbido), and Examiner Reynante DP. Martirez (Martirez; collectively, petitioners) assail the Decision[2] dated June 1, 2015 and the Order[3] dated October 26, 2015 of the RTC Br. 35 in Civil Case No. 4813-2014-C, which found Misajon, Balbido, and Martirez (Misajon, *et al*.) guilty of indirect contempt and, accordingly, ordered them to pay a fine of ₱5,000.00 each.

The Facts

On December 23, 2011, respondent Lepanto Ceramics, Inc. (LCI) – a corporation duly organized and existing under Philippine Laws with principal office address in Calamba City, Laguna – filed a petition[4] for corporate rehabilitation pursuant

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[1] *Rollo*, pp. 23-40.

[2] *Id*. at 47-53. Penned by Judge Gregorio M. Velasquez.

[3] *Id*. at 54.

[4] *Id*. at 55-65.

to Republic Act No. (RA) 10142,[5] otherwise known as the "Financial Rehabilitation and Insolvency Act (FRIA) of 2010," docketed before the RTC of Calamba City, Branch 34, the designated Special Commercial Court in Laguna (Rehabilitation Court). Essentially, LCI alleged that due to the financial difficulties it has been experiencing dating back to the Asian financial crisis, it had entered into a state of insolvency considering its inability to pay its obligations as they become due and that its total liabilities amounting to ₱4,213,682,715.00 far exceed its total assets worth ₱1,112,723,941.00. Notably, LCI admitted in the annexes attached to the aforesaid Petition its tax liabilities to the national government in the amount of at least ₱6,355,368.00.[6]

On January 13, 2012, the Rehabilitation Court issued a Commencement Order,[7] which, *inter alia*: (*a*) declared LCI to be under corporate rehabilitation; (*b*) suspended all actions or proceedings, in court or otherwise, for the enforcement of claims against LCI; (*c*) prohibited LCI from making any payment of its liabilities outstanding as of even date, except as may be provided under RA 10142; and (*d*) directed the BIR to file and serve on LCI its comment or opposition to the petition, or its claims against LCI.[8] Accordingly, the Commencement Order was published in a newspaper of general circulation and the same, together with the petition for corporate rehabilitation, were personally served upon LCI's creditors, including the BIR.[9]

Despite the foregoing, Misajon, *et al*., acting as Assistant Commissioner, Group Supervisor, and Examiner, respectively, of the BIR's Large Taxpayers Service, sent LCI a notice of

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[5] Entitled "AN ACT PROVIDING FOR THE REHABILITATION OR LIQUIDATION OF FINANCIALLY DISTRESSED ENTERPRISES AND INDIVIDUALS."

[6] See *rollo*, pp. 47 and 55-58.

[7] *Id*. at 66-68. Penned by Presiding Judge Maria Florencia B. Formes-Baculo.

[8] See *id*. at 67-68.

[9] See *id*. at 47-48.

informal conference[10] dated May 27, 2013, informing the latter of its deficiency internal tax liabilities for the Fiscal Year ending June 30, 2010. In response, LCI's court-appointed receiver, Roberto L. Mendoza, sent BIR a letter-reply, reminding the latter of the pendency of LCI's corporate rehabilitation proceedings, as well as the issuance of a Commencement Order in connection therewith. Undaunted, the BIR sent LCI a Formal Letter of Demand[11] dated May 9, 2014, requiring LCI to pay deficiency taxes in the amount of ₱567,519,348.39.[12] This prompted LCI to file a petition[13] for indirect contempt dated August 13, 2014 against petitioners before RTC Br. 35. In said petition, LCI asserted that petitioners' act of pursuing the BIR's claims for deficiency taxes against LCI outside of the pending rehabilitation proceedings in spite of the Commencement Order issued by the Rehabilitation Court is a clear defiance of the aforesaid Order. As such, petitioners must be cited for indirect contempt in accordance with Rule 71 of the Rules of Court in relation to Section 16 of RA 10142.[14]

For their part, petitioners maintained that: (*a*) RTC Br. 35 had no jurisdiction to cite them in contempt as it is only the Rehabilitation Court, being the one that issued the Commencement Order, which has the authority to determine whether or not such Order was defied; (*b*) the instant petition had already been mooted by the Rehabilitation Court's Order[15] dated August 28, 2014 which declared LCI to have been successfully rehabilitated resulting in the termination of the corporate rehabilitation proceedings; (*c*) their acts do not amount to a defiance of the Commencement Order as it was done merely to toll the prescriptive period in collecting deficiency taxes,

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[10] *Id*. at 69. Signed by Misajon.

[11] *Id*. at 70-72.

[12] See *id*. at 48.

[13] *Id*. at 99-105.

[14] See *id*. at 48-49 and 101-103.

[15] *Id*. at 125-129.

and thus, sanctioned by the Rules of Procedure of the FRIA; (*d*) their acts of sending a Notice of Informal Conference and Formal Letter of Demand do not amount to a "legal action or other recourse" against LCI outside of the rehabilitation proceedings; and (*e*) the indirect contempt proceedings interferes with the exercise of their functions to collect taxes due to the government.[16]

The RTC Br. 35 Ruling

In a Decision[17] dated June 1, 2015, the RTC Br. 35 found Misajon, *et al.* guilty of indirect contempt and, accordingly, ordered them to pay a fine of ₱5,000.00 each.[18] Preliminarily, the RTC Br. 35 ruled that it has jurisdiction over LCI's petition for indirect contempt as it is docketed, heard, and decided separately from the principal action.[19] Going to petitioners' other contentions, the RTC found that: (*a*) the supervening termination of the rehabilitation proceedings and the consequent lifting of the Commencement Order did not render moot the petition for indirect contempt as the acts complained of were already consummated; (*b*) petitioners' acts of sending LCI a notice of informal conference and Formal Letter of Demand are covered by the Commencement Order as they were for the purpose of pursuing and enforcing a claim for deficiency taxes, and thus, are in clear defiance of the Commencement Order; and (*c*) petitioners could have tolled the prescriptive period to collect deficiency taxes without violating the Commencement Order by simply ventilating their claim before the rehabilitation proceedings, which they were adequately notified of. In this relation, the RTC Br. 35 held that while the BIR is a juridical entity which can only act through its authorized intermediaries, it cannot be concluded that it authorized the latter to commit

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[16] See *id*. at 49. See also Comment (To the Petition for Indirect Contempt dated August 13, 2014) dated October 24, 2014; *id*. at 107-122.

[17] *Id*. at 47-53.

[18] *Id*. at 53.

[19] See *id*. at 49-50.

the contumacious acts complained of, *i.e.*, defiance of the Commencement Order. Thus, absent any contrary evidence, only those individuals who performed such acts, namely, Misajon, *et al.*, should be cited for indirect contempt of court.[20]

Aggrieved, Misajon, *et al.* moved for reconsideration,[21] which was, however, denied in an Order[22] dated October 26, 2015; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the RTC Br. 35 correctly found Misajon, *et al*. to have defied the Commencement Order and, accordingly, cited them for indirect contempt.

The Court's Ruling

The petition is without merit.

Section 4 (gg) of RA 10142 states:

Section 4. *Definition of Terms.* – As used in this Act, the term:

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(gg) *Rehabilitation* shall refer to the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated.

x x x x x x x x x

"[C]ase law has defined corporate rehabilitation as an attempt to conserve and administer the assets of an insolvent corporation in the hope of its eventual return from financial stress to solvency. It contemplates the continuance of corporate life and activities

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[20] *Id.* at 50-53.

[21] Not attached to the *rollo*.

[22] *Rollo*, p. 54.

in an effort to restore and reinstate the corporation to its former position of successful operation and liquidity."[23]

Verily, the inherent purpose of rehabilitation is to find ways and means to minimize the expenses of the distressed corporation during the rehabilitation period by providing the best possible framework for the corporation to gradually regain or achieve a sustainable operating form.[24] "[It] enable[s] the company to gain a new lease in life and thereby allow creditors to be paid [t]heir claims from its earnings. Thus, rehabilitation shall be undertaken when it is shown that the continued operation of the corporation is economically more feasible and its creditors can recover, by way of the present value of payments projected in the plan, more, if the corporation continues as a going concern than if it is immediately liquidated.[25]

In order to achieve such objectives, Section 16 of RA 10142 provides, *inter alia*, that upon the issuance of a Commencement Order – which includes a Stay or Suspension Order – all actions or proceedings, in court or otherwise, for the enforcement of "claims" against the distressed company shall be suspended.[26] Under the same law, claim "shall refer to all claims or demands of whatever nature or character against the debtor or its property, whether for money or otherwise, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, including, but not limited to; (1) **all claims of the government, whether national or local, including taxes, tariffs and customs duties**; and (2) claims against directors and officers of the debtor arising from acts done in the discharge of their functions falling within the scope of their authority: *Provided*, That, this inclusion does not prohibit the creditors or third parties

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[23] *Bank of the Philippine Islands v. Sarabia Manor Hotel Corp.*, 715 Phil. 420, 435-436 (2013).

[24] See *id*. at 437-439.

[25] *Bank of the Philippine Islands v. Sarabia Manor Hotel Corp.*, *supra* note 23, at 436.

[26] See Section 16 (q) (1) of RA 10142.

from filing cases against the directors and officers acting in their personal capacities."[27]

To clarify, however, creditors of the distressed corporation are not without remedy as they may still submit their claims to the rehabilitation court for proper consideration so that they may participate in the proceedings, keeping in mind the general policy of the law "to ensure or maintain certainty and predictability in commercial affairs, preserve and maximize the value of the assets of these debtors, recognize creditor rights and respect priority of claims, and ensure equitable treatment of creditors who are similarly situated."[28] In other words, the creditors must ventilate their claims before the rehabilitation court, and any "[a]ttempts to seek legal or other resource against the distressed corporation shall be sufficient to support a finding of indirect contempt of court."[29]

In the case at bar, it is undisputed that LCI filed a petition for corporate rehabilitation. Finding the same to be sufficient in form and substance, the Rehabilitation Court issued a Commencement Order[30] dated January 13, 2012 which, *inter alia*: (*a*) declared LCI to be under corporate rehabilitation; (*b*) suspended all actions or proceedings, in court or otherwise, for the enforcement of claims against LCI; (*c*) prohibited LCI from making any payment of its outstanding liabilities as of even date, except as may be provided under RA 10142; and (*d*) directed the BIR to file and serve on LCI its comment or opposition to the petition, or its claims against LCI. It is likewise undisputed that the BIR – personally and by publication – was notified of the rehabilitation proceedings involving LCI and the issuance of the Commencement Order related thereto. Despite the foregoing, the BIR, through Misajon, *et al.*, still opted to

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[27] See Section 4 (c) of RA 10142.

[28] See Section 2 of RA 10142.

[29] See Section 17 of RA 10142.

[30] *Rollo*, pp. 66-68. Penned by Presiding Judge Maria Florencia B. Formes-Baculo.

send LCI: (*a*) a notice of informal conference[31] dated May 27, 2013, informing the latter of its deficiency internal tax liabilities for the Fiscal Year ending June 30, 2010; and (*b*) a Formal Letter of Demand[32] dated May 9, 2014, requiring LCI to pay deficiency taxes in the amount of ₱567,519,348.39, notwithstanding the written reminder coming from LCI's court-appointed receiver of the pendency of rehabilitation proceedings concerning LCI and the issuance of a commencement order. Notably, the acts of sending a notice of informal conference and a Formal Letter of Demand are part and parcel of the entire process for the assessment and collection of deficiency taxes from a delinquent taxpayer,[33] – an action or proceeding for the enforcement of a claim which should have been suspended pursuant to the Commencement Order. Unmistakably, Misajon, *et al.*'s foregoing acts are in clear defiance of the Commencement Order.

Petitioners' insistence that: (*a*) Misajon, *et al*. only performed such acts to toll the prescriptive period for the collection of deficiency taxes; and (*b*) to cite them in indirect contempt would unduly interfere with their function of collecting taxes due to the government, cannot be given any credence. As aptly put by the RTC Br. 35, they could have easily tolled the running of such prescriptive period, and at the same time, perform their functions as officers of the BIR, without defying the Commencement Order and without violating the laudable purpose of RA 10142 by simply ventilating their claim before the Rehabilitation Court.[34] After all, they were adequately notified of the LCI's corporate rehabilitation and the issuance of the corresponding Commencement Order.

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[31] *Id*. at 69.

[32] *Id*. at 70-72.

[33] See <https://www.bir.gov.ph/index.php/taxpayer-bill-of-rights.html> last accessed April 18, 2017. See also BIR Revenue Regulations Nos. 12-1999 and 18-2013 regarding the due process requirement in the issuance of a deficiency tax assessment.

[34] See *rollo*, pp. 52-53.

In sum, it was improper for Misajon, *et al*. to collect, or even attempt to collect, deficiency taxes from LCI outside of the rehabilitation proceedings concerning the latter, and in the process, willfully disregard the Commencement Order lawfully issued by the Rehabilitation Court. Hence, the RTC Br. 35 correctly cited them for indirect contempt.[35]

WHEREFORE, the petition is **DENIED**. The Decision dated June 1, 2015 and the Order dated October 26, 2015 of the Regional Trial Court of Calamba City, Province of Laguna, Branch 35 in Civil Case No. 4813-2014-C are hereby **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 190432. April 25, 2017]

ASIA BREWERY, INC. and CHARLIE S. GO, *petitioners, vs.* **EQUITABLE PCI BANK (now BANCO DE ORO-EPCI, INC.)** *respondent.*

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[35] "Contempt of court is defined as a disobedience to the Court by acting in opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. Contempt of court is a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties-litigant or their witnesses during litigation." (*Roxas v. Tipon*, 688 Phil. 372, 382 [2012], citing *Lu Ym v. Mahinay*, 524 Phil. 564, 572 [2006])

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; FAILURE TO STATE A CAUSE OF ACTION DISTINGUISHED FROM LACK OF CAUSE OF ACTION.— ***Failure to state*** a cause of action is not the same as ***lack*** of cause of action; the terms are not interchangeable. It may be observed that lack of cause of action is not among the grounds that may be raised in a motion to dismiss under Rule 16 of the Rules of Court. The dismissal of a Complaint for lack of cause of action is based on Section 1 of Rule 33, which provides: Section 1. Demurrer to evidence. — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence. If the Complaint ***fails to state*** a cause of action, a motion to dismiss must be made before a responsive pleading is filed; and the issue can be resolved only on the basis of the allegations in the initiatory pleading. On the other hand, if the Complaint ***lacks*** a cause of action, the motion to dismiss must be filed after the plaintiff has rested its case. In the first situation, the veracity of the allegations is immaterial; however, in the second situation, the judge must determine the veracity of the allegations based on the evidence presented.

2. ID.; ID.; ID.; ID.; TEST TO DETERMINE CAUSE OF ACTION; ELEMENTS.— The test to determine whether a complaint states a cause of action against the defendants is this: admitting hypothetically the truth of the allegations of fact made in the complaint, may a judge validly grant the relief demanded in the complaint? A cause of action has three elements: 1) the legal right of the plaintiff; 2) the correlative obligation of the defendant not to violate the right; and 3) the act or omission of the defendant in violation of that legal right. x x x In *Aquino v. Quiazon,* we held that if the allegations in a complaint furnish sufficient basis on which the suit may be maintained, the complaint should not be dismissed regardless of the defenses that may be raised by the defendants. In other words, "[a]n affirmative defense, raising the ground that there is *no cause*

of action as against the defendants poses a question of fact that should be resolved after the conduct of the trial on the merits."

APPEARANCES OF COUNSEL

Eduardo G. Montenegro for petitioners.
BDO Unibank, Inc., Legal Services Group for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is a petition for review[1] under Rule 45 assailing the Orders[2] of the Regional Trial Court (RTC) of Makati City in Civil Case No. 04-336. The RTC ordered the dismissal of petitioners' Complaint for lack of cause of action and denied their motion for reconsideration.

Petitioner Asia Brewery, Inc. (ABI) is a corporation organized and existing under the laws of the Philippines, while petitioner Charlie S. Go (Go) was, at the time of the filing of this Petition, its assistant vice president for finance.[3] Respondent is a banking institution also organized and existing under the laws of the Philippines.[4]

On 23 March 2004, petitioners filed a Complaint[5] for payment, reimbursement, or restitution against respondent before the RTC. On 7 May 2004, the latter filed its Answer (with Counterclaims),[6]

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[1] Mistakenly labeled "Petition for *Certiorari*"; *rollo*, pp. 9-43.

[2] Order dated 30 January 2008 issued by Judge Benjamin T. Pozon as presiding judge of Branch 139 of the RTC-Makati, *id*. at 168-171; and Order dated 23 November 2009 issued by Judge Winlove Dumayas as presiding judge of Branch 59 of the RTC-Makati, *id*. at 217.

[3] *Id*. at 10-11.

[4] *Id*. at 10.

[5] *Id*. at 44-51.

[6] *Id*. at 97-120.

in which it also raised the special and/or affirmative defense of lack of cause of action, among others.

Records show that after an exchange of pleadings between the parties,[7] the RTC issued the assailed Orders without proceeding to trial. It dismissed the Complaint for lack of cause of action, and also denied respondent's counterclaims. Respondent did not appeal from that ruling. Only petitioners moved for reconsideration, but their motion was likewise denied.

ANTECEDENT FACTS

The antecedent facts, as alleged by petitioners, are as follows:

Within the period of September 1996 to July 1998, 10 checks and 16 demand drafts (collectively, "instruments") were issued in the name of Charlie Go.[8] The instruments, with a total value of ₱3,785,257.38, bore the annotation "endorsed by PCI Bank, Ayala Branch, All Prior Endorsement And/Or Lack of Endorsement Guaranteed."[9] All the demand drafts, except those issued by the Lucena City and Ozamis branches of Allied Bank, were crossed.[10]

In their Complaint, petitioners narrate:

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[7] On 18 May 2004, petitioners filed their Answer to Counterclaims (*see* Records, pp. 103-105). On 25 May 2004, the RTC issued a Notice setting the affirmative defenses for hearing (*see* Records, p. 106). On the date of the scheduled hearing, counsel for petitioner was given 15 days to file a Comment/Opposition to the affirmative defenses, and counsel for respondent was likewise given the same period from receipt to file a Reply; thereafter the matter will be considered submitted for resolution (*see* Minutes of the session held on 25 June 2004, Records, p. 107; Order dated 25 June 2004, p. 108). Hence on 8 July 2004, petitioners filed their Comment/Opposition (*see* Records, pp. 109-118). Respondent then filed a Reply, to which petitioners filed a Rejoinder dated 4 August 2004 (*see* Records, pp. 119-129, 132-140).

[8] *Id.* at 11.

[9] *Id.*

[10] *Id.*

10. None of the above checks and demand drafts set out under the First, Second, Third, Fourth, Fifth, and Sixth Causes of Action reached payee, co-plaintiff Charlie S. Go.

11. All of the above checks and demand drafts fell into the hands of a certain Raymond U. Keh, then a Sales Accounting Manager of plaintiff Asia Brewery, Inc., who falsely, willfully, and maliciously pretending to be the payee, co-plaintiff Charlie S. Go, succeeded in opening accounts with defendant Equitable PCI Bank in the name of Charlie Go and thereafter deposited the said checks and demand drafts in said accounts and withdrew the proceeds thereof to the damage and prejudice of plaintiff Asia Brewery, Inc.[11]

Raymond Keh was allegedly charged with and convicted of theft and ordered to pay the value of the checks, but not a single centavo was collected, because he jumped bail and left the country while the cases were still being tried.[12]

In demanding payment from respondent, petitioners relied on *Associated Bank v. CA,*[13] in which this Court held "the possession of check on a forged or unauthorized indorsement is wrongful, and when the money is collected on the check, the bank can be held for moneys had and received."[14]

In its Answer, respondent interpreted paragraphs 10 and 11 of the Complaint as an admission that the instruments had not been delivered to the payee, petitioner Go.[15] It argued that the Complaint failed to state a cause of action and that petitioners had no cause of action against it, because 1) the Complaint failed to indicate that ABI was a party to any of the instruments;[16] and 2) Go never became the holder or owner of the instruments due to nondelivery and, hence, did not acquire any right or

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[11] *Id.* at 47.

[12] *Id.* at 47-48.

[13] 284 Phil. 615 (1992).

[14] *Rollo*, p. 48.

[15] *Id.* at 102.

[16] *Id.* at 100.

interest.[17] Respondent also opined that the claims were only enforceable against the drawers of the checks and the purchasers of the demand drafts, and not against it as a mere "presentor bank," because the nondelivery to Go was analogous to payment to a wrong party.[18]

Respondent argued that *Development Bank of Rizal v. Sima Wei*[19] was squarely applicable to the case and cited these portions of the Decision therein:[20]

> Thus, the payee of a negotiable instrument acquires no interest with respect thereto until its delivery to him. Delivery of an instrument means transfer of possession, actual or constructive, from one person to another. Without the initial delivery of the instrument from the drawer to the payee, there can be no liability on the instrument. Moreover, such delivery must be intended to give effect to the instrument.
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> The allegations of the petitioner in the original complaint show that the two (2) China Bank checks, numbered 384934 and 384935, were not delivered to the payee, the petitioner herein. Without the delivery of said checks to petitioner-payee, the former did not acquire any right or interest therein and cannot therefore assert any cause of action, *founded on said checks*, whether against the drawer Sima Wei or against the Producers Bank or any of the other respondents.
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> x x x x x x x x x
>
> However, insofar as the other respondents are concerned, petitioner Bank has no privity with them. Since petitioner Bank never received the checks on which it based its action against said respondents, it never owned them (the checks) nor did it acquire any interest therein. Thus, anything which the respondents may have done with respect to said checks could not have prejudiced petitioner Bank. It had no right or interest in the checks which could have been violated by said respondents. Petitioner Bank has therefore no cause of action against said respondents, in the alternative or otherwise. If at all, it

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[17] *Id*. at 103.

[18] *Id*. at 104, 106-109.

[19] 219 SCRA 736, 9 March 1993.

[20] *Id*. at 740-742.

is Sima Wei, the drawer, who would have a cause of action against her co-respondents, if the allegations in the complaint are found to be true.

The RTC agreed with respondent that *Development Bank v. Sima Wei* was applicable.[21] It ruled that petitioners could not have any cause of action against respondent, because the instruments had never been delivered; and that the cause of action pertained to the drawers of the checks and the purchasers of the demand drafts.[22] As to the propriety of a direct suit against respondent, the trial court found that the former exercised diligence in ascertaining the true identity of Charlie Go, although he later turned out to be an impostor. This was unlike the finding in *Associated Bank v. CA*[23] where the collecting bank allowed a person who was clearly not the payee to deposit the checks and withdraw the amounts.[24]

ISSUES

Petitioners argue that the trial court seriously erred in dismissing their Complaint for lack of cause of action. They maintain that the allegations were sufficient to establish a cause of action in favor of Go.[25] They insist that the allegation that the instruments were payable to Go was sufficient to establish a cause of action.[26] According to them, the fact that the instruments never reached the payee did not mean that there was no delivery, because delivery can be either actual or constructive.[27] They point out that Section 16 of the Negotiable Instruments Law even provides for a presumption of delivery.[28]

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[21] *Rollo,* p. 168.

[22] *Id*. at 170.

[23] *Supra* note 13.

[24] *Rollo*, pp. 170-171.

[25] *Id*. at 22.

[26] *Id*. at 23.

[27] *Id*. at 25.

[28] *Id*.

They further argue that the defense of lack of delivery is personal to the maker or drawer, and that respondent was neither.[29] Petitioners emphasize that all the instruments were crossed (except those issued by the Lucena and Ozamis branches of Allied Bank) and bore the annotation by respondent that: "[A]ll prior endorsement and/or lack of endorsement guaranteed." In this light, the bank was allegedly estopped from claiming nondelivery.[30]

Petitioners observe that there was no other reason given for the dismissal of the case aside from lack of cause of action. They stress that not a single witness or documentary evidence was presented in support of the affirmative defense.[31]

COURT'S RULING

A reading of the Order dated 30 January 2008 reveals that the RTC dismissed the Complaint for lack of cause of action prior to trial. At that time, this Court, in the 2003 case *Bank of America NT&SA v. CA,*[32] had already emphasized that lack or absence of cause of action is not a ground for the dismissal of a complaint; and that the issue may only be raised after questions of fact have been resolved on the basis of stipulations, admissions, or evidence presented.

In this case, the trial court proceeded to rule in favor of the dismissal simply because it believed that the facts of another case were "[o]n all fours [with] the instant controversy."[33] It was gravely erroneous, and deeply alarming, for the RTC to have reached such a conclusion without first establishing the facts of the case pending before it. It must be noted that the documents submitted to it were mere photocopies that had yet to be examined, proven, authenticated, and admitted.

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[29] *Id.* at 32.

[30] *Id.* at 33.

[31] *Id.* at 22.

[32] 448 Phil. 181 (2003).

[33] *Rollo*, p. 168.

We are compelled to correct this glaring and serious error committed by the trial court. Accordingly, we grant the petition.

Failure to state a cause of action is not the same as ***lack*** of cause of action; the terms are not interchangeable. It may be observed that lack of cause of action is not among the grounds that may be raised in a motion to dismiss under Rule 16 of the Rules of Court. The dismissal of a Complaint for lack of cause of action is based on Section 1 of Rule 33, which provides:

> Section 1. Demurrer to evidence. — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence. (Emphasis supplied)

If the Complaint ***fails to state*** a cause of action, a motion to dismiss must be made before a responsive pleading is filed; and the issue can be resolved only on the basis of the allegations in the initiatory pleading.[34] On the other hand, if the Complaint ***lacks*** a cause of action, the motion to dismiss must be filed after the plaintiff has rested its case.[35]

In the first situation, the veracity of the allegations is immaterial; however, in the second situation, the judge must determine the veracity of the allegations based on the evidence presented.[36]

In *PNB v. Spouses Rivera,*[37] this Court upheld the CA ruling that the trial court therein erred in dismissing the Complaint on the ground of lack of cause of action. We said that "dismissal due to lack of cause of action may be raised any time after the

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[34] See *Pamaran v. Bank of Commerce,* G.R. No. 205753, 4 July 2016.

[35] *Id*.

[36] *Id*., citing *The Manila Banking Corporation v. University of Baguio, Inc.,* 545 Phil. 268, 275 (2007).

[37] G.R. No. 189577, 20 April 2016.

questions of fact have been resolved on the basis of stipulations, admissions, or evidence presented by the plaintiff."[38] In the case at bar, the action has not even reached the pretrial stage.

In *Pamaran v. Bank of Commerce*,[39] petitioners came directly to this Court and raised the issue of whether the trial court had erred in dismissing its Complaint only upon a motion to dismiss by way of affirmative defenses raised in the Answer of the defendant therein. The Court ruled then:

> Not only did the RTC Olongapo disregard the allegations in the Complaint, **it also failed to consider that the Bankcom's arguments necessitate the examination of the evidence that can be done through a full-blown trial**. The determination of whether Rosa has a right over the subject house and of whether Bankcom violated this right cannot be addressed in a mere motion to dismiss. Such determination requires the contravention of the allegations in the Complaint and the full adjudication of the merits of the case based on all the evidence adduced by the parties. (Emphasis supplied)

In the same manner, the arguments raised by both of the parties to this case require an examination of evidence. Even a determination of whether there was "delivery" in the legal sense necessitates a presentation of evidence. It was erroneous for the RTC to have concluded that there was no delivery, just because the checks did not reach the payee. It failed to consider Section 16 of the Negotiable Instruments Law, which envisions instances when instruments may have been delivered to a person other than the payee. The provision states:

> Sec. 16. *Delivery; when effectual; when presumed.* – Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. **As between immediate parties and as regards a remote party other than a holder in due course**, **the delivery, in order to be effectual**, must be made either by or under the authority of the party making, drawing, accepting, or indorsing, as the case may be; and, in such case, the

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[38] *Id.*, citing *Macaslang v. Spouses Zamora,* 664 Phil. 337 (2011).

[39] *Supra* note 34.

delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. **And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.** (Emphasis supplied)

Hence, in order to resolve whether the Complaint ***lacked*** a cause of action, respondent must have presented evidence to dispute the presumption that the signatories validly and intentionally delivered the instrument.

Even assuming that the trial court merely used the wrong terminology, that it intended to dismiss the Complaint on the ground of ***failure to state*** a cause of action, the Complaint would still have to be reinstated.

The test to determine whether a complaint states a cause of action against the defendants is this: admitting hypothetically the truth of the allegations of fact made in the complaint, may a judge validly grant the relief demanded in the complaint?[40]

We believe that petitioner met this test.

A cause of action has three elements: 1) the legal right of the plaintiff; 2) the correlative obligation of the defendant not to violate the right; and 3) the act or omission of the defendant in violation of that legal right.[41] In the case at bar, petitioners alleged in their Complaint as follows:

1) They have a legal right to be paid for the value of the instruments.

18. In the said case of Associated Bank vs. Court of Appeals, it was held that the "weight of authority is to the effect that 'the possession

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[40] See *Aquino v. Quiazon,* G.R. No. 201248, 11 March 2015.

[41] See *Pamaran, supra* note 34; *PNB v. Spouses Rivera, supra* note 35; *Bank of America NT&SA v. CA, supra* note 32 citing *San Lorenzo Village Association, Inc. v. CA,* 351 Phil. 353 (1998).

of a check on a forged or unauthorized indorsement is wrongful, and when the money is collected on the check, the bank can be held for moneys had and received.' The proceeds are held for the rightful owner of the payment and may be recovered by him. The position of the bank taking the check on the forged or unauthorized indorsement is the same as if it had taken the check and collected without indorsement at all. The act of the bank amounts to conversion of the check."[42]

2) Respondent has a correlative obligation to pay, having guaranteed all prior endorsements.

15. All of the commercial checks and demand drafts mentioned in the First, Second, Third, Fourth, Fifth and Sixth Causes of Action were endorsed by PCI-Bank-Ayala Branch "All Prior Endorsement And/Or Lack of Endorsement Guaranteed.[43]

3) Respondent refused to pay despite demand.

17. In a letter dated 19 November 2003 which was duly received by defendant Equitable PCI Bank, Legal Services Division, on December 17, 2003, plaintiff Charlie S. Go, relying on the decision in Associated Bank v. Court of Appeals, 208 SCRA 465, demanded from defendant Equitable PCI Bank payment, reimbursement or restitution of the value of the commercial checks and demand drafts mentioned in the First, Second, Third, Fourth, Fifth and Sixth Causes of Action. x x x

x x x x x x x x x

19. Instead of acceding to plaintiffs' valid and justifiable demand, defendant Equitable PCI Bank refused x x x.[44]

It is of no moment that respondent denies that it has any obligation to pay. In determining the presence of the elements, the inquiry is confined to the four corners of the complaint.[45] In fact, even if some of the allegations are in the form of

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[42] *Rollo*, p. 48.

[43] *Id*.

[44] *Id*. at 48-49.

[45] See *Ilano v. Español,* 514 Phil. 553 (2005).

conclusions of law, the elements of a cause of action may still be present.[46]

The Court believes that it need not delve into the issue of whether the instruments have been delivered, because it is a matter of *defense* that would have to be proven during trial on the merits. In *Aquino v. Quiazon,*[47] we held that if the allegations in a complaint furnish sufficient basis on which the suit may be maintained, the complaint should not be dismissed regardless of the defenses that may be raised by the defendants.[48] In other words, "[a]n affirmative defense, raising the ground that there is *no cause of action* as against the defendants poses a question of fact that should be resolved after the conduct of the trial on the merits."[49]

WHEREFORE, the petition is **GRANTED**. The Order dated 30 January 2008 issued by Judge Benjamin T. Pozon and the Order dated 23 November 2009 issued by Judge Winlove Dumayas in Civil Case No. 04-336 are **REVERSED** and **SET ASIDE**. The Complaint is **REINSTATED**, and the case is ordered **REMANDED** to the Regional Trial Court of Makati City for further proceedings. Let the records of the case be likewise remanded to the court *a quo.*

SO ORDERED.

Leonardo-de Castro, del Castillo, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

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[46] *Id.*

[47] *Supra* note 39.

[48] *Id.* citing *Insular Investment and Trust Corp. v. Capital One Equities Corp.,* 686 Phil. 819 (2012).

[49] *Id.* citing *Heirs of Paez v. Torres*, 381 Phil. 393, 402 (2000).

FIRST DIVISION

[G.R. No. 191320. April 25, 2017]

JONA BUMATAY, *petitioner, vs.* **LOLITA BUMATAY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IN APPEALS OF CRIMINAL CASES BEFORE THE SUPREME COURT, THE AUTHORITY TO REPRESENT THE STATE IS VESTED SOLELY IN THE SOLICITOR GENERAL; SUSTAINED IN CASE AT BAR.— Rule 110, Section 5 of the Revised Rules of Criminal Procedure, dictates that all criminal actions commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor. In appeals of criminal cases before the Supreme Court, the authority to represent the State is vested solely in the Office of the Solicitor General (OSG). This authority is codified in Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code, x x x Thus, in criminal cases, the People is the real party-in-interest and only the OSG can represent the People in criminal proceedings before this Court. Inasmuch as the private offended party is but a witness in the prosecution of offenses, the interest of the private offended party is limited only to the aspect of civil liability. It follows therefore that in criminal cases, the dismissal of the case against an accused can only be appealed by the Solicitor General, acting on behalf of the State. x x x While this Court is mindful of cases where the private offended party was allowed to pursue a criminal action on his or her own behalf – such as when there is a denial of due process – such exceptional circumstances do not exist in this case. The OSG, in its *Manifestation*, expressly stated that it will not file a reply to Lolita's *comment* on the petition for review on certiorari considering that it did not file the present petition.

2. ID.; CIVIL PROCEDURE; PARTIES; REAL PARTY IN INTEREST; REAL INTEREST REFERS TO A PRESENT SUBSTANTIAL INTEREST, AND NOT A MERE EXPECTANCY, OR A FUTURE, CONTINGENT,

SUBORDINATE OR CONSEQUENTIAL INTEREST.— Settled is the rule that "every action must be prosecuted or defended in the name of the real party in interest [,]" who, in turn, is one "who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit." Within the context, "interest" means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere interest in the question involved. To be clear, real interest refers to a present substantial interest, and not a mere expectancy, or a future, contingent, subordinate or consequential interest.

APPEARANCES OF COUNSEL

Atencia Law Offices for petitioner.
Aquino Martinez & Velasquez Law Offices for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Petitioner Jona Bumatay (Jona) against herein Respondent Lolita Bumatay (Lolita), assailing the Court of Appeals': (1) *Decision*[1] dated August 28, 2009, which denied Petitioner's appeal in the case of *People of the Philippines v. Lolita F. Bumatay*, docketed as CA-G.R. CR. No. 31124; and (2) *Resolution*[2] dated February 4, 2010 denying Petitioner's Motion for Reconsideration.

The Facts

Lolita allegedly married a certain Amado Rosete (Amado) on January 30, 1968, when she was 16 years old.[3] The marriage

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[1] *Rollo*, pp. 33-43. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Fernanda Lampas-Peralta and Ramon R. Garcia concurring.

[2] *Id*. at 31-32.

[3] *Id*. at 8, 57.

was solemnized before Judge Delfin D. Rosario, in Malasiqui, Pangasinan.[4] Prior to the declaration of nullity of her marriage with Amado on September 20, 2005,[5] Lolita married Jona's foster father,[6] Jose Bumatay (Jose), on November 6, 2003.[7]

On August 17, 2004, Jona filed a *Complaint-affidavit* for Bigamy against Lolita,[8] summarizing the acts complained of as follows:

> [i.] On January 30, 1968, Ms. Lolita Ferrer contracted marriage with a certain Amado Rosete before the Hon. Delfin D. Rosario, municipal judge of Malasiqui Pangasinan;
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> [ii.] Again, on November 6, 2003, while her husband Amado Rosete was still alive and her marriage with him was valid and subsisting, Ms. Lolita Ferrer contracted another marriage with Jose M. Bumatay in Malasiqui, Pangasinan;
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> [iii.] When Lolita Ferrer contracted her second marriage with Jose Bumatay, she knows fully well that her first marriage with her first husband Mr. Amado Rosete, who is still living up to today, has not been legally dissolved but existing[.][9]

In her *Counter-Affidavit*, Lolita claims that she learned from her children (with Amado) that Amado had filed a petition for declaration of nullity of their marriage.[10] Subsequently, sometime in 1990, she was informed by her children that Amado had died in Nueva Vizcaya.[11]

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[4] *Id*. at 35, 57.

[5] Decision in Civil Case No. 2005-0023-D, penned by Judge Silverio Q. Castillo of RTC, Branch 43 of Dagupan City; *rollo*, pp. 78-84.

[6] *Rollo*, p. 59.

[7] *Id*. at 58.

[8] *Id*. at 12.

[9] *Id*.

[10] *Id*. at 35.

[11] *Id*.

Subsequently, an Information for Bigamy was filed by Prosecutor Bernardo S. Valdez of the Office of the Provincial Prosecutor of San Carlos City, with the Regional Trial Court of San Carlos City, Pangasinan, Branch 56 (RTC-San Carlos) on November 8, 2004.[12] The Information alleged:

> The undersigned Government Prosecutor, hereby accuses LOLITA BUMATAY y FERRER, of the crime of BIGAMY, committed as follows:
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> > That on or about November 6, 2003, in the municipality of Malasiqui, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Lolita F. Bumatay being then legally married to one Amado Rosete, which marriage is still subsisting not having been legally dissolved, did then and there, willfully, unlawfully and feloniously contracted a second marriage with Jose Bumatay, believing that accused has the legal capacity to contract their marriage, to the damage and prejudice of complainant, Jona S. Bumatay.
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> Contrary to Article 349 of the Revised Penal Code. San Carlos City, Pangasinan, October 7, 2004.[13]

The Proceedings before the RTC-Dagupan City on Lolita's Petition for Declaration of Nullity

Meanwhile, sometime in January 2005 — after the Information for Bigamy against her was filed[14] in the RTC-San Carlos but before her arraignment, Lolita filed with the Regional Trial Court of Dagupan City, Pangasinan, Branch 43[15] (RTC-Dagupan City) a petition for the declaration of nullity of her marriage to Amado.[16]

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[12] *Id.* at 14.

[13] *Id.* at 14, 70.

[14] November 8, 2004.

[15] Presided by Judge Silverio Q. Castillo; the case was docketed as Civil Case No. 2005-0023-D.

[16] *Rollo*, p. 35.

On September 20, 2005, the RTC-Dagupan City issued a *Decision*[17] declaring as null and void the marriage between Lolita and Amado, *viz*:

WHEREFORE, in view of all of the above, judgment is hereby rendered by this Honorable Court as follows:

1. Declaring the marriage between the plaintiff Lolita Ferrer and the defendant Amado Rosete ***void ab initio***;
2. Ordering the Local Civil Registrar of Malasiqui, Pangasinan to make the proper annotations in the entry of marriage of the parties in their Register of Marriages.

SO ORDERED.[18]

Based on the evidence submitted, including the testimonies from Lolita herself and her sister Erlinda,[19] the RTC-Dagupan City found that no marriage ceremony took place between Lolita and Amado as it was Lolita's sister who had married Amado and that, in fact, the signature appearing on the marriage certificate was not Lolita's signature but that of her sister's.[20] Thus, to the RTC-Dagupan City, there being no marriage ceremony that actually took place between Amado and Lolita,[21] their marriage was void from the very beginning.[22]

The Bigamy Proceedings before the RTC-San Carlos

In the bigamy case in RTC-San Carlos involving Criminal Case No. SCC-4357, Lolita sought a deferment of the arraignment for bigamy. On November 2, 2005,[23] she filed a *Motion to Quash*[24]

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[17] *Id*. at 78-84.

[18] *Id*. at 84.

[19] *Id*. at 81.

[20] *Id*. at 83.

[21] *Id*.

[22] *Id*.

[23] *Id*. at 36.

[24] *Id*. at 72-77. Denominated as Motion to Dismiss/Quash.

the Information. Her motion was hinged on the argument that the first element of the crime of bigamy — that is, that the offender has been previously legally married — is not present. In support, Lolita attached a copy of the RTC-Dagupan City *Decision*[25] declaring the marriage between her and Amado void *ab initio* on the ground that there was no marriage ceremony between them and what transpired was a marriage by proxy.[26]

Subsequently, in its *Order*[27] dated March 20, 2006, the RTC-San Carlos **granted** Lolita's *Motion to Quash* and dismissed the complaint for bigamy, relying on *Morigo v. People*,[28] thus:

> Due to the significant resemblance of this case to the *Morigo* case, this Court is constrained to adopt and apply the ruling and principles laid down in *Morigo*. As succinctly put by the Supreme Court in the case aforementioned[:]
>
> "*The first element of bigamy as a crime requires that the accused must have been legally married, but in this case, legally speaking, the petitioner was never married to Lucia Barrete. Thus, there is no first marriage to speak of. Under the principle of retroactivity of a marriage being declared void ab initio, the two were never married from the beginning. The contract of marriage is null; it bears no legal effect. Taking this argument to its logical conclusion, for legal purposes, petitioner was not married to Lucia Barrete at the time he contracted the marriage with Maria Lumbago. The petitioner, must perforce, be acquitted of the charge*.

Since the first marriage has been declared void *ab initio*, there is no first marriage to begin with in determining the foremost element of bigamy. Such declaration of nullity retroacts to the date of the first marriage. The accused in this case was, under the eyes of the law, never married to Amado Rosete at the time she contracted the marriage with Jose Bumatay. Following this judicial fiat, the defense

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[25] Dated September 20, 2005; *supra* note 17.

[26] *Rollo*, p. 15.

[27] *Id*. at 85-89.

[28] 466 Phil. 1013 (2004).

of good faith and lack of criminal intent has been rendered moot and academic."[29]

The RTC-San Carlos concluded that there were "glaring material similarities"[30] between *Morigo* and the case against Lolita. Thus, in dismissing the bigamy case against Lolita, the RTC-San Carlos held that since the first marriage has been declared void *ab initio*, then, pursuant to the ruling in *Morigo*, there is no first marriage to begin with in determining the foremost element of bigamy. Such declaration of nullity retroacts to the date of the first marriage.[31] Thus, accused Lolita in this case was, for all intents and purposes, never married to Amado at the time she contracted the marriage with Jose. Based on the foregoing, the RTC-San Carlos dismissed the Bigamy charge against Lolita. Aggrieved, Jona appealed the RTC-San Carlos' *Order* to the CA.

The CA Decision

In its *Decision* dated August 28, 2009,[32] the CA **affirmed** the RTC-San Carlos' *Order* dated March 20, 2006 granting the *Motion to Quash* and **dismissed** Jona's appeal. The CA resolved the issue of whether the RTC-San Carlos erred in ordering the quashal of the Information for Bigamy on the ground that the criminal liability of the accused had been extinguished when her first marriage was declared null and void *ab initio*.[33]

In upholding the RTC-San Carlos' decision, the CA held that:

First, a motion to quash is the mode by which an accused assails, before entering his plea, the validity of the criminal complaint or information filed against him for insufficiency

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[29] *Rollo*, p. 88.

[30] *Id.* at 87.

[31] *Id.* at 88.

[32] *Id.* at 33-43.

[33] *Id.* at 39.

on its face in point of law, or for a defect apparent on the face of the Information.[34] Under Rule 117, Section 3 of the Rules of Court, in the hearing of a motion to quash, only such facts as are alleged in the information, and those admitted by the prosecutor, should be taken into account in the resolution thereof unless the Rules expressly permit the investigation of the facts alleged in the motion to quash. However, the Supreme Court has held that under Rule 117, Section 2 of the Rules of Court, a motion to quash may be based on factual and legal grounds and that it necessarily follows that facts outside the Information itself may be introduced to prove such grounds.[35]

Here, the trial court anchored its acquittal on the *Declaration of Nullity* issued by the RTC-Dagupan City, on the ground that no actual marriage ceremony took place.[36] The RTC-Dagupan City reasoned that there being no first marriage to speak of, there was no legal impediment at the time the accused married Jose Bumatay; and as a consequence, the accused is not guilty of bigamy. Consequently, according to the CA, it is crystal clear that in granting the motion to quash, the RTC-Dagupan City took into consideration the factual findings of the RTC-Dagupan City which led to the latter's declaration that the marriage of Lolita and Amado was null and void *ab initio*.[37]

Finally, the CA was not persuaded by Jona's contention that the RTC-San Carlos erred in granting the motion to quash on the basis of the decision declaring the nullity of the first marriage since it is not among the grounds for extinction of criminal liability. The CA agreed with the RTC-San Carlos' conclusion that the extinction of criminal liability presupposes the existence of such liability in the first place, which is later totally obliterated by virtue of a certain circumstance that eventually happens. In

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[34] *Id.*

[35] *Id.* at 40-41, citing *Garcia v. CA*, 334 Phil. 621, 634 (1997), further citing *People v. De la Rosa*, 187 Phil. 118 (1980).

[36] *Id.* at 41.

[37] *Id.*

the present case, criminal liability never existed from the beginning as the first marriage never validly occurred due to the fact that a marriage ceremony never took place. Hence, there was no criminal liability to extinguish in the first place.[38]

Jona's *Motion for Reconsideration* was likewise denied by the CA in its *Resolution* dated February 4, 2010,[39] finding that the arguments raised in the Motion for Reconsideration are substantially a reiteration of those already passed upon and considered by the CA in its *Decision*. Jona received a copy of said CA *Resolution* on February 17, 2010.[40]

On April 5, 2010, Jona filed, in her personal capacity, the instant petition. In a *Resolution* dated April 28, 2010, the Court required Lolita to file her comment.[41] Lolita filed her *Comment*[42] on June 11, 2010, while Jona filed her *Reply (with Compliance)* on March 9, 2011.[43]

The Issue

The sole issue brought before this Court is whether the CA committed any reversible error in upholding the RTC-San Carlos' *Order* granting Lolita's motion to quash the Information for the crime of Bigamy.

The Court's Ruling

The petition is denied.

Based on the records, it appears undisputed that Petitioner has no legal personality to assail the dismissal of the criminal

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[38] *Id*. at 42.

[39] *Id*. at 31-32.

[40] *Id*. at 3, 10.

[41] *Id*. at 90.

[42] *Id*. at 92-98.

[43] *Id*. at 109-115.

case. Rule 110, Section 5[44] of the Revised Rules of Criminal Procedure,[45] dictates that all criminal actions commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor. In appeals of criminal cases before the Supreme Court, the authority to represent the State is vested solely in the Office of the Solicitor General (OSG).[46]

This authority is codified in Section 35(1), Chapter 12, Title III, Book IV of the 1987 Administrative Code, which provides:

> SECTION 35. *Powers and Functions*. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:
>
> (1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings**; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. (Emphasis supplied)

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[44] Section 5. *Who must prosecute criminal actions*. — All criminal actions either commenced by a complaint or information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.

[45] As amended by A.M. No. 02-2-07-SC, April 10, 2002.

[46] See *Cariño v. De Castro*, 576 Phil. 634, 639 (2008); see also *Macasaet v. People*, 492 Phil. 355, 375 (2005).

Thus, in criminal cases, the People is the real party-in-interest and only the OSG can represent the People in criminal proceedings before this Court. Inasmuch as the private offended party is but a witness in the prosecution of offenses,[47] the interest of the private offended party is limited only to the aspect of civil liability.[48] It follows therefore that in criminal cases, the dismissal of the case against an accused can only be appealed by the Solicitor General, acting on behalf of the State.[49]

In *Beams Philippine Export Corp. v. Castillo*,[50] a similar appeal by a private party of a criminal case, the Court cogently disposed, thus:

"The purpose of a criminal action, in its purest sense, is to determine the penal liability of the accused for having outraged the state with his crime and, if he be found guilty, to punish him for it. In this sense, the parties to the action are the People of the Philippines and the accused. The offended party is regarded merely as a witness for the state."

Consequently, the sole authority to institute proceedings before the CA or the SC is vested only on the OSG. Under Presidential Decree No. 478, among the specific powers and functions of the OSG was to "represent the Government in the [SC] and the [CA] in all criminal proceedings x x x." This provision has been carried over to the Revised Administrative Code particularly in Book IV, Title III, Chapter 12 thereof. Clearly, the OSG is the appellate counsel of the People of the Philippines in all criminal cases.

Moreover, in *Bautista v. Cuneta-Pangilinan,* this Court held that in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the OSG, acting on behalf of the State. The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned.

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[47] See *People v. Santiago*, 255 Phil. 851, 861 (1989).

[48] *Id.*; *Palu-ay v. CA*, 355 Phil. 94, 99-100 (1998); *Rodriguez v. Gadiane*, 527 Phil. 691, 698-699 (2006).

[49] *Bautista v. Cuneta-Pangilinan*, 698 Phil. 110, 123 (2012); see also *Villareal v. Aliga*, 724 Phil. 47, 57- 58 (2014).

[50] G.R. No. 188372, November 25, 2015, 775 SCRA 489.

In the present case, a perusal of the petition for *certiorari* filed by the petitioner before the CA discloses that it sought reconsideration of the criminal aspect of the decision of the RTC, not the civil aspect of the case. x x x

x x x x x x x x x

Clearly, the petition is bereft of any claim for civil liability. In fact, the petitioner did not even briefly discuss the alleged civil liability of the respondents. As such, it is apparent that the petitioner's only desire was to appeal the dismissal of the criminal case against the respondents. Since *estafa*, however, is a criminal offense, only the OSG has the power to prosecute the case on appeal. Therefore, the petitioner lacked the personality or legal standing to question the RTC decision.[51]

While this Court is mindful of cases[52] where the private offended party was allowed to pursue a criminal action on his or her own behalf – such as when there is a denial of due process – such exceptional circumstances do not exist in this case. The OSG, in its *Manifestation*,[53] expressly stated that it will not file a reply to Lolita's *comment* on the petition for review on certiorari considering that it did not file the present petition.[54]

To be sure, Jona's personality to even institute the bigamy case and thereafter to appeal the RTC-San Carlos' *Order*[55] dismissing the same is nebulous, at best. Settled is the rule that "every action must be prosecuted or defended in the name of the real party in interest[,]" who, in turn, is one "who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit."[56] Within this context,

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[51] *Id.* at 492-493; citations omitted.

[52] See *Jimenez v. Sorongon*, 700 Phil. 316, 325 (2012), citing *Merciales v. Court of Appeals*, 429 Phil. 70, 77 (2002); see *People v. CA*, 676 Phil. 330, 336 (2011).

[53] Dated August 31, 2010; *rollo,* pp. 102-103.

[54] *Id.* at 102.

[55] *Id.* at 85-89.

[56] *Jimenez v. Sorongon*, *supra* note 52, at 324, citing 1997 RULES OF CIVIL PROCEDURE, Rule 3, Sec. 2.

"interest" means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere interest in the question involved.[57] To be clear, real interest refers to a present substantial interest, and not a mere expectancy, or a future, contingent, subordinate or consequential interest.[58]

Here, the record is replete with indications[59] that Jona's natural parents are unknown and she was merely raised as the "foster daughter" of Jose Bumatay, without having undergone the process of legal adoption.[60] It likewise does not escape the Court's attention that in the *Petition for the Issuance of Letters of Administration* filed by Rodelio Bumatay (Jose Bumatay's nephew), Jona was described as "claiming to be the adopted [child] of [Jose] but cannot present legal proof to this effect."[61] Finally, even in her own *Reply*[62] (to the comment to the petition for review), Jona merely denotes herself as "the only child of the late Jose Bumatay,"[63] without, however, presenting or even indicating any document or proof to support her claim of personality or legal standing.

Based on the foregoing, the Court does not see the need and will not waste its precious time in even delving into the question of whether or not the CA decision upholding the dismissal of the Bigamy case was erroneous or not. Indeed, in view of the lack of personality of the party who filed the petition, any such discourse by the Court would be obiter and correctly characterized as an advisory opinion.

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[57] *Id*., citing *Ang v. Sps. Ang*, 693 Phil. 106, 115 (2012); and *Goco v. Court of Appeals*, 631 Phil. 394, 403 (2010).

[58] *Id*., citing *United Church of Christ in the Philippines, Inc. v. Bradford United Church of Christ, Inc.*, 688 Phil. 408, 428 (2012); and *Galicto v. H.E. President Aquino III,* 683 Phil. 141, 171 (2012).

[59] *Rollo*, p. 59, par. 3; *id*. at 45, par. 6.

[60] *Id*.

[61] *Id*. at 45, par. 6.

[62] *Id*. at 109-115.

[63] *Id*. at 110.

WHEREFORE, premises considered, this Court resolves to **DENY** the instant petition for lack of merit and **AFFIRM** the Court of Appeals' *Decision* dated August 28, 2009 and *Resolution* dated February 4, 2010.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perlas-Bernabe, JJ.*, concur.

EN BANC

[G.R. No. 199669. April 25, 2017]

SOUTHERN LUZON DRUG CORPORATION, *petitioner, vs.* **THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT, THE NATIONAL COUNCIL FOR THE WELFARE OF DISABLED PERSONS, THE DEPARTMENT OF FINANCE, AND THE BUREAU OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; ACTION FOR PROHIBITION, DISCUSSED.— Generally, the office of prohibition is to prevent the unlawful and oppressive exercise of authority and is directed against proceedings that are done without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy, and adequate remedy in the ordinary course of law. It is the remedy to prevent inferior courts, corporations, boards, or persons from usurping or exercising a jurisdiction or power with which they have not been vested by law. This is, however, not the lone office of an action for prohibition. In *Diaz, et al. v. The Secretary of Finance, et al.*, prohibition was also recognized as a proper remedy to prohibit or nullify acts of executive officials that

amount to usurpation of legislative authority. And, in a number of jurisprudence, prohibition was allowed as a proper action to assail the constitutionality of a law or prohibit its implementation. x x x [P]rohibition has been found an appropriate remedy to challenge the constitutionality of various laws, rules, and regulations.

2. ID.; JURISDICTION; THE COURT OF APPEALS (CA) HAS JURISDICTION TO HEAR AND DECIDE A PETITION FOR PROHIBITION; THE PRINCIPLE OF HIERARCHY OF COURTS MAY BE SET ASIDE FOR SPECIAL AND IMPORTANT REASONS INVOLVING PUBLIC WELFARE, PUBLIC POLICY OR BY THE BROADER INTEREST OF JUSTICE.— By express provision of the law, particularly Section 9(1) of Batas Pambansa Bilang 129, the CA was granted "original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari, habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction." This authority the CA enjoys concurrently with RTCs and this Court. x x x [T]he principle of hierarchy of courts may be set aside for special and important reasons, such as when dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice. Thus, when based on the good judgment of the court, the urgency and significance of the issues presented calls for its intervention, it should not hesitate to exercise its duty to resolve. The instant petition presents an exception to the principle as it basically raises a legal question on the constitutionality of the mandatory discount and the breadth of its rightful beneficiaries. More importantly, the resolution of the issues will redound to the benefit of the public as it will put to rest the questions on the propriety of the granting of discounts to senior citizens and PWDs amid the fervent insistence of affected establishments that the measure transgresses their property rights. The Court, therefore, finds it to the best interest of justice that the instant petition be resolved.

3. POLITICAL LAW; POWERS OF THE STATE; POLICE POWER; IT IS IN THE EXERCISE OF POLICE POWER THAT RA 9257 AND 9442 WAS ENACTED, MANDATING THEREIN A 20% DISCOUNT ON PURCHASES OF MEDICINES MADE BY SENIOR CITIZENS AND PERSONS WITH DISABILITY (PWDs), AND THE SAME

BE CLAIMED AS TAX DEDUCTION RATHER THAN TAX CREDIT.— It is in the exercise of its police power that the Congress enacted R.A. Nos. 9257 and 9442, the laws mandating a 20% discount on purchases of medicines made by senior citizens and PWDs. It is also in further exercise of this power that the legislature opted that the said discount be claimed as tax deduction, rather than tax credit, by covered establishments. x x x [T]he issue of just compensation finds no relevance in the instant case as it had already been made clear in *Carlos Superdrug* that the power being exercised by the State in the imposition of senior citizen discount was its police power.

4. **ID.; ID.; POWER OF EMINENT DOMAIN; FIVE CIRCUMSTANCES THAT MUST BE PRESENT TO QUALIFY "TAKING" AS AN EXERCISE OF EMINENT DOMAIN.—** According to *Republic of the Philippines v. Vda. de Castellvi*, five circumstances must be present in order to qualify "taking" as an exercise of eminent domain. *First*, the expropriator must enter a private property. *Second*, the entrance into private property must be for more than a momentary period. *Third*, the entry into the property should be under warrant or color of legal authority. *Fourth*, the property must be devoted to a public use or otherwise informally appropriated or injuriously affected. *Fifth*, the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.

5. **ID.; ID.; ID.; JUST COMPENSATION; NOT APPLICABLE IN RIGHT TO PROFIT.—** [P]etitioner argues that the law is confiscatory in the sense that the State takes away a portion of its supposed profits which could have gone into its coffers and utilizes it for public purpose. The petitioner claims that the action of the State amounts to taking for which it should be compensated. To reiterate, the subject provisions only affect the petitioner's right to profit, and not earned profits. Unfortunately for the petitioner, the right to profit is not a vested right or an entitlement that has accrued on the person or entity such that its invasion or deprivation warrants compensation. Vested rights are "fixed, unalterable, or irrevocable." x x x Right to profits does not give the petitioner the cause of action to ask for just compensation, it being only an inchoate right or one that has not fully developed and therefore cannot be claimed as one's own. An inchoate right is a mere expectation, which

may or may not come into existence. It is contingent as it only comes "into existence on an event or condition which may not happen or be performed until some other event may prevent their vesting." Certainly, the petitioner cannot claim confiscation or taking of something that has yet to exist. It cannot claim deprivation of profit before the consummation of a sale and the purchase by a senior citizen or PWD.

6. ID.; LEGISLATIVE BRANCH OF GOVERNMENT; IT IS WITHIN THE PROVINCE OF THE CONGRESS TO TREAT PRICE DISCOUNTS EITHER AS TAX DEDUCTION OR AS TAX CREDIT.— Anent the question regarding the shift from tax credit to tax deduction, suffice it is to say that it is within the province of Congress to do so in the exercise of its legislative power. It has the authority to choose the subject of legislation, outline the effective measures to achieve its declared policies and even impose penalties in case of non-compliance. It has the sole discretion to decide which policies to pursue and devise means to achieve them, and courts often do not interfere in this exercise for as long as it does not transcend constitutional limitations. "In performing this duty, the legislature has no guide but its judgment and discretion and the wisdom of experience." x x x Corollary, whether to treat the discount as a tax deduction or tax credit is a matter addressed to the wisdom of the legislature. After all, it is within its prerogative to enact laws which it deems sufficient to address a specific public concern. And, in the process of legislation, a bill goes through rigorous tests of validity, necessity and sufficiency in both houses of Congress before enrolment. It undergoes close scrutiny of the members of Congress and necessarily had to surpass the arguments hurled against its passage. Thus, the presumption of validity that goes with every law as a form of deference to the process it had gone through and also to the legislature's exercise of discretion.

7. ID.; CONSTITUTION; BILL OF RIGHTS; EQUAL PROTECTION OF THE LAWS; REQUISITES FOR A VALID CLASSIFICATION OF PERSONS; TO RECOGNIZE ALL SENIOR CITIZENS AS A GROUP (IN RA 9257), AND THE PWDs ALSO AS A GROUP (IN RA 9442), IS A VALID CLASSIFICATION.— "The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class. If the

groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another." For a classification to be valid, (1) it must be based upon substantial distinctions, (2) it must be germane to the purposes of the law, (3) it must not be limited to existing conditions only, and (4) it must apply equally to all members of the same class. [In RA No. 9442], [t]o recognize all senior citizens as a group, without distinction as to income, is a valid classification. The Constitution itself considered the elderly as a class of their own and deemed it a priority to address their needs. When the Constitution declared its intention to prioritize the predicament of the underprivileged sick, elderly, disabled, women, and children, it did not make any reservation as to income, race, religion or any other personal circumstances. It was a blanket privilege afforded the group of citizens in the enumeration in view of the vulnerability of their class. x x x The same ratiocination may be said of the recognition of PWDs as a class in R.A. No. 9442 and in granting them discounts. x x x [T]he grant of mandatory discount is germane to the purpose of R.A. Nos. 9257 and 9442, that is, to adopt an integrated and comprehensive approach to health development and make essential goods and other social services available to all the people at affordable cost, with special priority given to the elderlies and the disabled, among others. The privileges granted by the laws ease their concerns and allow them to live more comfortably. The subject laws also address a continuing concern of the government for the welfare of the senior citizens and PWDs. It is not some random predicament but an actual, continuing and pressing concern that requires preferential attention. Also, the laws apply to all senior citizens and PWDs, respectively, without further distinction or reservation. Without a doubt, all the elements for a valid classification were met.

8. TAXATION; RA NO. 9442; DISABLED PERSONS AND PERSONS WITH DISABILITIES (PWDs), SUFFICIENTLY DEFINED.— Section 4(a) of R.A. No. 7277, the precursor of R.A. No. 9442, defines "disabled persons" as follows: (a) ***Disabled persons*** are those suffering from restriction or different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being[.] On the other hand, the term "PWDs" is defined in Section 5.1 of the IRR of R.A. No. 9442 as follows; 5.1. ***Persons with Disability*** are those

individuals defined under Section 4 of [R.A. No.] 7277 [or] An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Persons with Disability as amended and their integration into the Mainstream of Society and for Other Purposes. This is defined as a person suffering from restriction or different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in a manner or within the range considered normal for human being. Disability shall mean (1) a physical or mental impairment that substantially limits one or more psychological, physiological or anatomical function of an individual or activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment. x x x [T]he Court gathers no ambiguity in the provisions of R.A. No. 9442. As regards the petitioner's claim that the law lacked reasonable standards in determining the persons entitled to the discount, Section 32 thereof is on point as it identifies who may avail of the privilege and the manner of its availment. x x x To provide further safeguard, the Department of Health issued A.O. No. 2009-0011, providing guidelines for the availment of the 20% discount on the purchase of medicines by PWDs. x x x The PWD identification card also has a validity period of only three years which facilitate in the monitoring of those who may need continued support and who have been relieved of their disability, and therefore may be taken out of the coverage of the law. At any rate, the law has penal provisions which give concerned establishments the option to file a case against those abusing the privilege.

LEONEN, *J.*, *concurring and dissenting opinion*:

1. POLITICAL LAW; POWERS OF THE STATE; POWER OF TAXATION; TAX DEDUCTION SCHEME UNDER SECTION 4(a) OF RA 9257 (EXPANDED SENIOR CITIZENS ACT) AND SECTION 32 OF RA 9442 (MAGNA CARTA OF PERSONS WITH DISABILITY) IS AN EXERCISE OF THE STATE'S POWER OF TAXATION.— This case involves a Petition for Review on Certiorari questioning the constitutionality of Section 4(a) of Republic Act No. 9257 (Expanded Senior Citizens Act of 2003), Section 32 of Republic Act No. 9442 (Magna Carta of Persons with Disability), and Sections 5.1 and 6.1.d of the Implementing Rules and Regulations of Republic Act No. 9442. x x x I concur that the subject

provisions are constitutional. The grant of the 20% discount to senior citizens and persons with disability is a valid exercise of police power. However, I opine that the Tax Deduction Scheme is an exercise of the State's power of taxation x x x Establishments giving the discount may claim the costs of the discount as tax deductions from their gross income.

2. ID.; ID.; ID.; ID.; THE TAX DEDUCTION SCHEME IS UNIFORM AND EQUITABLE.— The determination that the cost of the 20% discount will be recovered as a tax deduction instead of a tax credit is within the legislative's power to tax. x x x The Tax Deduction Scheme is uniform and equitable. Uniformity of taxation means that all subjects of taxation similarly situated are to be treated alike both in privileges and liabilities. The taxes are uniform if: (1) the standards used are substantial and not arbitrary, (2) the categorization is germane to the purpose of the law, (3) the law applies, all things being equal, to both present and future conditions, and (4) the classification applies equally well to all those belonging to the same class. Since the 20% discount applies to all senior citizens and persons with disability equally, and the tax deduction scheme applies to all establishments granting the discounts, there is no issue on the uniformity of the tax measure. Likewise, the tax deduction is not confiscatory or arbitrary. While the establishments cannot recover the full cost of the granted discount, they are still not at a full loss as they may claim the cost as a tax deduction from their gross income, and they are free to adjust prices and costs of their products.

3. ID.; ID.; POWER OF EMINENT DOMAIN; REQUISITES; POSSIBLE PROFITS CANNOT BE ACQUIRED BY THE STATE THROUGH THE EXERCISE OF THE POWER OF EMINENT DOMAIN.— The power of eminent domain is found in the Constitution under Article III, Section 9 of the Constitution: "Private property shall not be taken for public use without just compensation." The requisites for the exercise of eminent domain are: (1) there must be a genuine necessity for its exercise; (2) what is taken must be private *property*; (3) there is taking in the constitutional sense; (4) the taking is for public use; and (5) there must be payment of just compensation. x x x The exercise of the power of eminent domain requires that there is property that is taken from the owner. In this case, there is no private property that may be the subject

of a constitutional taking. The subject of the alleged "taking" is the establishments' *possible profits*. Possible profits cannot be acquired by the State through the exercise of the power of eminent domain. Possible profits are yet to be earned; hence, they are yet to be *owned*. They are intangible property for which establishments do not have a *vested right*.

4. TAXATION; BOTH TAX DEDUCTIONS AND TAX CREDITS ARE VALID OPTIONS FOR THE CONGRESS.— Both tax deductions and tax credits are valid options for the Congress, although the impacts of the two (2) are different. [A] tax deduction will naturally cause establishments to increase their prices to fully recover the cost of the discounts, and prevent losses. The burden of the cost is thus passed on to ordinary customers – to non-senior citizens with no disability. x x x A tax credit, on the other hand, allows the cost to be shouldered completely by the government. In such a case, establishments will not need to adjust its prices to recover the cost of the discount.

CARPIO, *J.*, *dissenting opinion*:

1. POLITICAL LAW; STATE POWERS; TAKING OF PROPERTY, IN POLICE POWER AND IN EMINENT DOMAIN, MUST BE CLARIFIED.— The provisions in contention in the case before the Court are Section 4(a) of Republic Act No. 9257 (R.A. 9257) and Section 32 of Republic Act No. 9442 (R.A. 9442) which grant a 20% discount on the purchase of medicines, respectively, to senior citizens and persons with disability. x x x The majority opinion affirms the constitutionality of the assailed provisions and reiterated the rulings in [cases] x x x that the challenged provisions constitute a valid exercise of police power. I maintain my dissent in *the Manila Memorial Park* case. I assert that *Carlos Superdrug Corporation* barely distinguished between police power and eminent domain. While it is true that police power is similar to the power of eminent domain because both have the general welfare of the people for their object, we need to clarify the concept of taking in eminent domain as against taking in police power to prevent any claim of police power when the power actually exercised is eminent domain. **When police power is exercised, there is no just compensation to the citizen who loses his private property. When eminent domain is exercised,**

there must be just compensation. Thus, the Court must distinguish and clarify taking in police power and taking in eminent domain. Government officials cannot just invoke police power when the act constitutes eminent domain. x x x **[P]olice power, when applied to taking of property without compensation, refers to property that is destroyed or placed outside the commerce of man.** x x x **The police power to regulate business cannot negate another provision of the Constitution like the eminent domain clause, which requires just compensation to be paid for the taking of private property for public use. The State has the power to regulate the conduct of the business of private establishments as long as the regulation is reasonable, but when the regulation amounts to permanent taking of private property for public use, there must be just compensation because the regulation now reaches the level of eminent domain.**

2. **ID.; ID.; EMINENT DOMAIN; SECTION 4(A) OF RA 9257 AND SECTION 32 OF RA 9442 CONTEMPLATE TAKING OF PROPERTY FOR PUBLIC USE.—** Both Section 4(a) of R.A. 9257 and Section 32 of R.A. 9442 undeniably contemplate taking of property for public use. Private property is anything that is subject to private ownership. The property taken for public use applies not only to land but also to other proprietary property, including the mandatory discounts given to senior citizens and persons with disability which form part of the gross sales of the private establishments that are forced to give them. **The amount of mandatory discount is money that belongs to the private establishment. For sure, money or cash is private property because it is something of value that is subject to private ownership.** The taking of property under Section 4(a) of R.A. 9257 and Section 32 of R.A. 9442 is an exercise of the power of eminent domain and not an exercise of the police power of the State. x x x Section 9, Article III of the 1987 Constitution speaks of private property without any distinction. It does not state that there should be profit before the taking of property is subject to just compensation.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for petitioner.

The Solicitor General for public respondents.

D E C I S I O N

REYES, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated June 17, 2011, and Resolution[3] dated November 25, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 102486, which dismissed the petition for prohibition filed by Southern Luzon Drug Corporation (petitioner) against the Department of Social Welfare and Development (DSWD), the National Council for the Welfare of Disabled Persons (NCWDP) (now National Council on Disability Affairs or NCDA), the Department of Finance (DOF) and the Bureau of Internal Revenue (collectively, the respondents), which sought to prohibit the implementation of Section 4(a) of Republic Act (R.A.) No. 9257, otherwise known as the "*Expanded Senior Citizens Act of 2003*" and Section 32 of R.A. No. 9442, which amends the "*Magna Carta for Disabled Persons*," particularly the granting of 20% discount on the purchase of medicines by senior citizens and persons with disability (PWD), respectively, and treating them as tax deduction.

The petitioner is a domestic corporation engaged in the business of drugstore operation in the Philippines while the respondents are government agencies, office and bureau tasked to monitor compliance with R.A. Nos. 9257 and 9442, promulgate implementing rules and regulations for their effective implementation, as well as prosecute and revoke licenses of erring establishments.

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[1] *Rollo*, pp. 11-78.

[2] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Estela M. Perlas-Bernabe (now a member of this Court) and Sesinando E. Villon concurring; *id*. at 79-93.

[3] *Id*. at 94.

Factual Antecedents

On April 23, 1992, R.A. No. 7432, entitled "*An Act to Maximize the Contribution of Senior Citizens to Nation-Building, Grant Benefits and Special Privileges and For Other Purposes*," was enacted. Under the said law, a senior citizen, who must be at least 60 years old and has an annual income of not more than ₱60,000.00,[4] may avail of the privileges provided in Section 4 thereof, one of which is 20% discount on the purchase of medicines. The said provision states:

Sec. 4. *Privileges for the Senior Citizen.* – x x x:

a) the grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishment, restaurants and recreation centers and purchase of medicine anywhere in the country: **Provided, That private establishments may claim the cost as tax credit**[.]

x x x x x x x x x (Emphasis ours)

To recoup the amount given as discount to qualified senior citizens, covered establishments can claim an equal amount as tax credit which can be applied against the income tax due from them.

On February 26, 2004, then President Gloria Macapagal-Arroyo signed R.A. No. 9257, amending some provisions of R.A. No. 7432. The new law retained the 20% discount on the purchase of medicines but removed the annual income ceiling thereby qualifying all senior citizens to the privileges under the law. Further, R.A. No. 9257 modified the tax treatment of the discount granted to senior citizens, from tax credit to tax deduction from gross income, computed based on the net cost of goods sold or services rendered. The pertinent provision, as amended by R.A. No. 9257, reads as follows:

SEC. 4. *Privileges for the Senior Citizens.* – The senior citizens shall be entitled to the following:

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[4] R.A. No. 7432, Section 2.

(a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishments, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;

x x x x x x x x x

The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: *Provided*, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. *Provided, further,* That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended. (Emphasis ours)

On May 28, 2004, the DSWD issued the Implementing Rules and Regulations (IRR) of R.A. No. 9257. Article 8 of Rule VI of the said IRR provides:

Article 8. *Tax Deduction of Establishments*. – The establishment may claim the discounts granted under Rule V, Section 4 – Discounts for Establishments; Section 9, Medical and Dental Services in Private Facilities and Sections 10 and 11 – Air, Sea and Land Transportation as tax deduction based on the net cost of the goods sold or services rendered. **Provided, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted;** Provided, further, That the total amount of the claimed tax deduction net of value-added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended; Provided, finally, that the implementation of the tax deduction shall be subject to the Revenue Regulations to be issued by the Bureau of Internal Revenue (BIR) and approved by the Department of Finance (DOF). (Emphasis ours)

The change in the tax treatment of the discount given to senior citizens did not sit well with some drug store owners and corporations, claiming it affected the profitability of their

business. Thus, on January 13, 2005, Carlos Superdrug Corporation (Carlos Superdrug), together with other corporation and proprietors operating drugstores in the Philippines, filed a Petition for Prohibition with Prayer for Temporary Restraining Order (TRO) and/or Preliminary Injunction before this Court, entitled *Carlos Superdrug Corporation v. DSWD*,[5] docketed as G.R. No. 166494, assailing the constitutionality of Section 4(a) of R.A. No. 9257 primarily on the ground that it amounts to taking of private property without payment of just compensation. In a Decision dated June 29, 2007, the Court upheld the constitutionality of the assailed provision, holding that the same is a legitimate exercise of police power. The relevant portions of the decision read, thus:

> The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as "the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs." It is "[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same."
>
> For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.
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> x x x x x x x x x
>
> Moreover, the right to property has a social dimension. While Article XIII of the Constitution provides the precept for the protection of property, various laws and jurisprudence, particularly on agrarian reform and the regulation of contracts and public utilities, continuously

[5] 553 Phil. 120 (2007).

serve as a reminder that the right to property can be relinquished upon the command of the State for the promotion of public good.

Undeniably, the success of the senior citizens program rests largely on the support imparted by petitioners and the other private establishments concerned. This being the case, the means employed in invoking the active participation of the private sector, in order to achieve the purpose or objective of the law, is reasonably and directly related. Without sufficient proof that Section 4(a) of R.A. No. 9257 is arbitrary, and that the continued implementation of the same would be unconscionably detrimental to petitioners, the Court will refrain from quashing a legislative act.

WHEREFORE, the petition is *DISMISSED* for lack of merit.[6] (Citations omitted)

On August 1, 2007, Carlos Superdrug filed a motion for reconsideration of the foregoing decision. Subsequently, the Court issued Resolution dated August 21, 2007, denying the said motion with finality.[7]

Meanwhile, on March 24, 1992, R.A. No. 7277 pertaining to the "*Magna Carta for Disabled Persons*" was enacted, codifying the rights and privileges of PWDs. Thereafter, on April 30, 2007, R.A. No. 9442 was enacted, amending R.A. No. 7277. One of the salient amendments in the law is the insertion of Chapter 8 in Title 2 thereof, which enumerates the other privileges and incentives of PWDs, including the grant of 20% discount on the purchase of medicines. Similar to R.A. No. 9257, covered establishments shall claim the discounts given to PWDs as tax deductions from the gross income, based on the net cost of goods sold or services rendered. Section 32 of R.A. No. 9442 reads:

CHAPTER 8. Other Privileges and Incentives

SEC. 32. Persons with disability shall be entitled to the following:

x x x x x x x x x

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[6] *Id*. at 132-135.

[7] *Rollo*, p. 433.

(c) At least twenty percent (20%) discount for the purchase of medicines in all drugstores for the exclusive use or enjoyment of persons with disability;

x x x x x x x x x

The establishments may claim the discounts granted in sub-Sections (a), (b), (c), (e), (f) and (g) as tax deductions based on the net cost of the goods sold or services rendered: *Provided, however,* That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted: *Provided, further,* That the total amount of the claimed tax deduction net of value-added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code (NIRC), as amended. (Emphasis ours)

Pursuant to the foregoing, the IRR of R.A. No. 9442 was promulgated by the DSWD, Department of Education, DOF, Department of Tourism and the Department of Transportation and Communications.[8] Sections 5.1 and 6.1.d thereof provide:

Sec. 5. *Definition of Terms.* For purposes of these Rules and Regulations, these terms are defined as follows:

5.1. ***Persons with Disability*** are those individuals defined under Section 4 of RA 7277, "An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Persons with Disability as amended and their integration into the Mainstream of Society and for Other Purposes." This is defined as a person suffering from restriction or different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in a manner or within the range considered normal for human being. Disability shall mean: (1) a physical or mental impairment that substantially limits one or more psychological, physiological or anatomical function of an individual or activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.

x x x x x x x x x

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[8] *Id.* at 434-435.

> 6.1.d ***Purchase of Medicine*** – At least twenty percent (20%) discount on the purchase of medicine for the exclusive use and enjoyment of persons with disability. All drug stores, hospital, pharmacies, clinics and other similar establishments selling medicines are required to provide at least twenty percent (20%) discount subject to the guidelines issued by DOH and PHILHEALTH.

On February 26, 2008, the petitioner filed a Petition for Prohibition with Application for TRO and/or Writ of Preliminary Injunction[9] with the CA, seeking to declare as unconstitutional (a) Section 4(a) of R.A. No. 9257, *and* (b) Section 32 of R.A. No. 9442 and Section 5.1 of its IRR, insofar as these provisions only allow tax deduction on the gross income based on the net cost of goods sold or services rendered as compensation to private establishments for the 20% discount that they are required to grant to senior citizens and PWDs. Further, the petitioner prayed that the respondents be permanently enjoined from implementing the assailed provisions.

Ruling of the CA

On June 17, 2011, the CA dismissed the petition, reiterating the ruling of the Court in *Carlos Superdrug*[10] particularly that Section 4(a) of R.A. No. 9257 was a valid exercise of police power. Moreover, the CA held that considering that the same question had been raised by parties similarly situated and was resolved in *Carlos Superdrug*, the rule of *stare decisis* stood as a hindrance to any further attempt to relitigate the same issue. It further noted that jurisdictional considerations also compel the dismissal of the action. It particularly emphasized that it has no original or appellate jurisdiction to pass upon the constitutionality of the assailed laws,[11] the same pertaining to the Regional Trial Court (RTC). Even assuming that it had concurrent jurisdiction with the RTC, the principle of hierarchy

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[9] *Id*. at 100-158.

[10] *Supra* note 5.

[11] *Rollo*, p. 87.

of courts mandates that the case be commenced and heard by the lower court.[12] The CA further ruled that the petitioner resorted to the wrong remedy as a petition for prohibition will not lie to restrain the actions of the respondents for the simple reason that they do not exercise judicial, quasi-judicial or ministerial duties relative to the issuance or implementation of the questioned provisions. Also, the petition was wanting of the allegations of the specific acts committed by the respondents that demonstrate the exercise of these powers which may be properly challenged in a petition for prohibition.[13]

The petitioner filed its Motion for Reconsideration[14] of the Decision dated June 17, 2011 of the CA, but the same was denied in a Resolution[15] dated November 25, 2011.

Unyielding, the petitioner filed the instant petition, raising the following assignment of errors, to wit:

I

THE CA SERIOUSLY ERRED WHEN IT RULED THAT A PETITION FOR PROHIBITION FILED WITH THE CA IS AN IMPROPER REMEDY TO ASSAIL THE CONSTITUTIONALITY OF THE 20% SALES DISCOUNT FOR SENIOR CITIZENS AND PWDs;

II

THE CA SERIOUSLY ERRED WHEN IT HELD THAT THE SUPREME COURT'S RULING IN *CARLOS SUPERDRUG* CONSTITUTES *STARE DECISIS*;

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[12] *Id*. at 89.

[13] *Id*. at 91.

[14] *Id*. at 335-383.

[15] *Id*. at 94.

III

THE CA SERIOUSLY ERRED ON A QUESTION OF SUBSTANCE WHEN IT RULED THAT THE 20% SALES DISCOUNT FOR SENIOR CITIZENS AND PWDs IS A VALID EXERCISE OF POLICE POWER. ON THE CONTRARY, IT IS AN INVALID EXERCISE OF THE POWER OF EMINENT DOMAIN BECAUSE IT FAILS TO PROVIDE JUST COMPENSATION TO THE PETITIONER AND OTHER SIMILARLY SITUATED DRUGSTORES;

IV

THE CA SERIOUSLY ERRED ON A QUESTION OF SUBSTANCE WHEN IT RULED THAT THE 20% SALES DISCOUNT FOR SENIOR CITIZENS AND PWDs DOES NOT VIOLATE THE PETITIONER'S RIGHT TO EQUAL PROTECTION OF THE LAW; *and*

V

THE CA SERIOUSLY ERRED ON A QUESTION OF SUBSTANCE WHEN IT RULED THAT THE DEFINITIONS OF DISABILITIES AND PWDs ARE NOT VAGUE AND DO NOT VIOLATE THE PETITIONER'S RIGHT TO DUE PROCESS OF LAW.[16]

Ruling of the Court

Prohibition may be filed to question the constitutionality of a law

In the assailed decision, the CA noted that the action, although denominated as one for prohibition, seeks the declaration of the unconstitutionality of Section 4(a) of R.A. No. 9257 and Section 32 of R.A. No. 9442. It held that in such a case, the proper remedy is not a special civil action but a petition for

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[16] *Id*. at 25.

declaratory relief, which falls under the exclusive original jurisdiction of the RTC, in the first instance, and of the Supreme Court, on appeal.[17]

The Court clarifies.

Generally, the office of prohibition is to prevent the unlawful and oppressive exercise of authority and is directed against proceedings that are done without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy, and adequate remedy in the ordinary course of law. It is the remedy to prevent inferior courts, corporations, boards, or persons from usurping or exercising a jurisdiction or power with which they have not been vested by law.[18] This is, however, not the lone office of an action for prohibition. In *Diaz, et al. v. The Secretary of Finance, et al.*,[19] prohibition was also recognized as a proper remedy to prohibit or nullify acts of executive officials that amount to usurpation of legislative authority.[20] And, in a number of jurisprudence, prohibition was allowed as a proper action to assail the constitutionality of a law or prohibit its implementation.

In *Social Weather Stations, Inc. v. Commission on Elections*,[21] therein petitioner filed a petition for prohibition to assail the constitutionality of Section 5.4 of R.A. No. 9006, or the "*Fair Elections Act*," which prohibited the publication of surveys within 15 days before an election for national candidates, and seven days for local candidates. Included in the petition is a prayer to prohibit the Commission on Elections from enforcing the said provision. The Court granted the petition and struck down the assailed provision for being unconstitutional.[22]

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[17] *Id*. at 89.

[18] *Lt. Gonzales v. Gen. Abaya*, 530 Phil. 189, 215 (2006).

[19] 669 Phil. 371 (2011).

[20] *Id*. at 383.

[21] 409 Phil. 571 (2001).

[22] *Id*. at 592.

In *Social Justice Society (SJS) v. Dangerous Drugs Board, et al.*,[23] therein petitioner assailed the constitutionality of paragraphs (c), (d), (f) and (g) of Section 36 of R.A. No. 9165, otherwise known as the "*Comprehensive Dangerous Drugs Act of 2002,*" on the ground that they constitute undue delegation of legislative power for granting unbridled discretion to schools and private employers in determining the manner of drug testing of their employees, and that the law constitutes a violation of the right against unreasonable searches and seizures. It also sought to enjoin the Dangerous Drugs Board and the Philippine Drug Enforcement Agency from enforcing the challenged provision.[24] The Court partially granted the petition by declaring Section 36(f) and (g) of R.A. No. 9165 unconstitutional, and permanently enjoined the concerned agencies from implementing them.[25]

In another instance, consolidated petitions for prohibitions[26] questioning the constitutionality of the Priority Development Assistance Fund were deliberated upon by this Court which ultimately granted the same.

Clearly, prohibition has been found an appropriate remedy to challenge the constitutionality of various laws, rules, and regulations.

There is also no question regarding the jurisdiction of the CA to hear and decide a petition for prohibition. By express provision of the law, particularly Section 9(1) of Batas Pambansa Bilang 129,[27] the CA was granted "original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari, habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not

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[23] 591 Phil. 393 (2008).

[24] *Id*. at 403.

[25] *Id*. at 419.

[26] *Belgica, et al. v. Honorable Executive Secretary Ochoa, Jr., et al.,* 721 Phil. 416 (2013).

[27] THE JUDICIARY REORGANIZATION ACT OF 1980. Approved on August 14, 1981.

in aid of its appellate jurisdiction." This authority the CA enjoys concurrently with RTCs and this Court.

In the same manner, the supposed violation of the principle of the hierarchy of courts does not pose any hindrance to the full deliberation of the issues at hand. It is well to remember that "the judicial hierarchy of courts is not an iron-clad rule. It generally applies to cases involving warring factual allegations. For this reason, litigants are required to [refer] to the trial courts at the first instance to determine the truth or falsity of these contending allegations on the basis of the evidence of the parties. Cases which depend on disputed facts for decision cannot be brought immediately before appellate courts as they are not triers of facts. Therefore, a strict application of the rule of hierarchy of courts is not necessary when the cases brought before the appellate courts do not involve factual but legal questions."[28]

Moreover, the principle of hierarchy of courts may be set aside for special and important reasons, such as when dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice.[29] Thus, when based on the good judgment of the court, the urgency and significance of the issues presented calls for its intervention, it should not hesitate to exercise its duty to resolve.

The instant petition presents an exception to the principle as it basically raises a legal question on the constitutionality of the mandatory discount and the breadth of its rightful beneficiaries. More importantly, the resolution of the issues will redound to the benefit of the public as it will put to rest the questions on the propriety of the granting of discounts to senior citizens and PWDs amid the fervent insistence of affected establishments that the measure transgresses their property rights. The Court, therefore, finds it to the best interest of justice that the instant petition be resolved.

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[28] *Mangaliag v. Judge Catubig-Pastoral*, 510 Phil. 637, 646-647 (2005).

[29] *Congressman Chong, et al. v. Hon. Dela Cruz, et al.*, 610 Phil. 725, 728 (2009).

The instant case is not barred by *stare decisis*

The petitioner contends that the CA erred in holding that the ruling in *Carlos Superdrug* constitutes as *stare decisis* or law of the case which bars the relitigation of the issues that had been resolved therein and had been raised anew in the instant petition. It argues that there are substantial differences between *Carlos Superdrug* and the circumstances in the instant case which take it out from the operation of the doctrine of *stare decisis*. It cites that in *Carlos Superdrug*, the Court denied the petition because the petitioner therein failed to prove the confiscatory effect of the tax deduction scheme as no proof of actual loss was submitted. It believes that its submission of financial statements for the years 2006 and 2007 to prove the confiscatory effect of the law is a material fact that distinguishes the instant case from that of *Carlos Superdrug*.[30]

The Court agrees that the ruling in *Carlos Superdrug* does not constitute *stare decisis* to the instant case, not because of the petitioner's submission of financial statements which were wanting in the first case, but because it had the good sense of including questions that had not been raised or deliberated in the former case of *Carlos Superdrug, i.e.,* validity of the 20% discount granted to PWDs, the supposed vagueness of the provisions of R.A. No. 9442 and violation of the equal protection clause.

Nonetheless, the Court finds nothing in the instant case that merits a reversal of the earlier ruling of the Court in *Carlos Superdrug*. Contrary to the petitioner's claim, there is a very slim difference between the issues in *Carlos Superdrug* and the instant case with respect to the nature of the senior citizen discount. A perfunctory reading of the circumstances of the two cases easily discloses marked similarities in the issues and the arguments raised by the petitioners in both cases that semantics nor careful play of words can hardly obscure.

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[30] *Rollo*, pp. 33-38.

In both cases, it is apparent that what the petitioners are ultimately questioning is not the grant of the senior citizen discount *per se*, but the manner by which they were allowed to recoup the said discount. In particular, they are protesting the change in the tax treatment of the senior citizen discount from tax credit to being merely a deduction from gross income which they claimed to have significantly reduced their profits.

This question had been settled in *Carlos Superdrug*, where the Court ruled that the change in the tax treatment of the discount was a valid exercise of police power, thus:

> Theoretically, the treatment of the discount as a deduction reduces the net income of the private establishments concerned. The discounts given would have entered the coffers and formed part of the gross sales of the private establishments, were it not for R.A. No. 9257.
>
> x x x x x x x x x
>
> A tax deduction does not offer full reimbursement of the senior citizen discount. As such, it would not meet the definition of just compensation.
>
> Having said that, this raises the question of whether the State, in promoting the health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program.
>
> The Court believes so.
>
> The Senior Citizens Act was enacted primarily to maximize the contribution of senior citizens to nation-building, and to grant benefits and privileges to them for their improvement and well-being as the State considers them an integral part of our society.
>
> The priority given to senior citizens finds its basis in the Constitution as set forth in the law itself. Thus, the Act provides:
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> SEC. 2. [R.A.] No. 7432 is hereby amended to read as follows:
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> SEC. 1. *Declaration of Policies and Objectives.*— Pursuant to Article XV, Section 4 of the Constitution, it is the duty of the family to take care of its elderly members while the State may design programs of social security for them. In addition to this, Section 10 in the Declaration of Principles and State Policies provides: "The State shall provide social justice in all

> phases of national development." Further, Article XIII, Section 11, provides: "The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women and children." Consonant with these constitutional principles the following are the declared policies of this Act:
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> x x x x x x x x x
>
> **(f) To recognize the important role of the private sector in the improvement of the welfare of senior citizens and to actively seek their partnership.**

To implement the above policy, the law grants a twenty percent discount to senior citizens for medical and dental services, and diagnostic and laboratory fees; admission fees charged by theaters, concert halls, circuses, carnivals, and other similar places of culture, leisure and amusement; fares for domestic land, air and sea travel; utilization of services in hotels and similar lodging establishments, restaurants and recreation centers; and purchases of medicines for the exclusive use or enjoyment of senior citizens. As a form of reimbursement, the law provides that business establishments extending the twenty percent discount to senior citizens may claim the discount as a tax deduction.

The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as "the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs." It is "[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same."

For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.[31] (Citations omitted and emphasis in the original)

Verily, it is the bounden duty of the State to care for the elderly as they reach the point in their lives when the vigor of their youth has diminished and resources have become scarce. Not much because of choice, they become needing of support from the society for whom they presumably spent their productive days and for whose betterment they exhausted their energy, know-how and experience to make our days better to live.

In the same way, providing aid for the disabled persons is an equally important State responsibility. Thus, the State is obliged to give full support to the improvement of the total well-being of disabled persons and their integration into the mainstream of society.[32] This entails the creation of opportunities for them and according them privileges if only to balance the playing field which had been unduly tilted against them because of their limitations.

The duty to care for the elderly and the disabled lies not only upon the State, but also on the community and even private entities. As to the State, the duty emanates from its role as *parens patriae* which holds it under obligation to provide protection and look after the welfare of its people especially those who cannot tend to themselves. *Parens patriae* means parent of his or her country, and refers to the State in its role as "sovereign", or the State in its capacity as a provider of protection to those unable to care for themselves.[33] In fulfilling this duty, the State may resort to the exercise of its inherent powers: police power, eminent domain and power of taxation.

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[31] *Carlos Superdrug Corp. v. DSWD*, *supra* note 5, at 129-132.

[32] R.A. No. 7277, Section 2(a).

[33] *Oliver v. Feldner*, 149 Ohio App. 3d 114, 2002 Ohio 3209, 776 N.E.2d 499 (Ct. App. 2002).

In *Gerochi v. Department of Energy*,[34] the Court passed upon one of the inherent powers of the state, the police power, where it emphasized, thus:

> [P]olice power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. The justification is found in the Latin maxim *salus populi est suprema lex* (the welfare of the people is the supreme law) and *sic utere tuo ut alienum non laedas* (so use your property as not to injure the property of others). As an inherent attribute of sovereignty which virtually extends to all public needs, police power grants a wide panoply of instruments through which the State, as *parens patriae*, gives effect to a host of its regulatory powers. We have held that the power to "regulate" means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons.[35] (Citations omitted)

It is in the exercise of its police power that the Congress enacted R.A. Nos. 9257 and 9442, the laws mandating a 20% discount on purchases of medicines made by senior citizens and PWDs. It is also in further exercise of this power that the legislature opted that the said discount be claimed as tax deduction, rather than tax credit, by covered establishments.

The petitioner, however, claims that the change in the tax treatment of the discount is illegal as it constitutes taking without just compensation. It even submitted financial statements for the years 2006 and 2007 to support its claim of declining profits when the change in the policy was implemented.

The Court is not swayed.

To begin with, the issue of just compensation finds no relevance in the instant case as it had already been made clear in *Carlos Superdrug* that the power being exercised by the State in the imposition of senior citizen discount was its police power.

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[34] 554 Phil. 563 (2007).

[35] *Id.* at 579-580.

Unlike in the exercise of the power of eminent domain, just compensation is not required in wielding police power. This is precisely because there is no taking involved, but only an imposition of burden.

In *Manila Memorial Park, Inc., et al. v. Secretary of the DSWD, et al.*,[36] the Court ruled that by examining the nature and the effects of R.A. No. 9257, it becomes apparent that the challenged governmental act was an exercise of police power. It was held, thus:

> [W]e now look at the nature and effects of the 20% discount to determine if it constitutes an exercise of police power or eminent domain.
>
> The 20% discount is intended to improve the welfare of senior citizens who, at their age, are less likely to be gainfully employed, more prone to illnesses and other disabilities, and, thus, in need of subsidy in purchasing basic commodities. It may not be amiss to mention also that the discount serves to honor senior citizens who presumably spent the productive years of their lives on contributing to the development and progress of the nation. This distinct cultural Filipino practice of honoring the elderly is an integral part of this law.
>
> As to its nature and effects, the 20% discount is a regulation affecting the ability of private establishments to price their products and services relative to a special class of individuals, senior citizens, for which the Constitution affords preferential concern. In turn, this affects the amount of profits or income/gross sales that a private establishment can derive from senior citizens. In other words, the subject regulation affects the pricing, and, hence, the profitability of a private establishment. However, it does not purport to appropriate or burden specific properties, used in the operation or conduct of the business of private establishments, for the use or benefit of the public, or senior citizens for that matter, but merely regulates the pricing of goods and services relative to, and the amount of profits or income/gross sales that such private establishments may derive from, senior citizens.

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[36] 722 Phil. 538 (2013).

The subject regulation may be said to be similar to, but with substantial distinctions from, price control or rate of return on investment control laws which are traditionally regarded as police power measures. x x x.[37] (Citations omitted)

In the exercise of police power, "property rights of private individuals are subjected to restraints and burdens in order to secure the general comfort, health, and prosperity of the State."[38] Even then, the State's claim of police power cannot be arbitrary or unreasonable. After all, the overriding purpose of the exercise of the power is to promote general welfare, public health and safety, among others. It is a measure, which by sheer necessity, the State exercises, even to the point of interfering with personal liberties or property rights in order to advance common good. To warrant such interference, two requisites must concur: (a) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State; and (b) the means employed are reasonably necessary to the attainment of the object sought to be accomplished and not unduly oppressive upon individuals. In other words, the proper exercise of the police power requires the concurrence of a lawful subject and a lawful method.[39]

The subjects of R.A. Nos. 9257 and 9442, *i.e.*, senior citizens and PWDs, are individuals whose well-being is a recognized public duty. As a public duty, the responsibility for their care devolves upon the concerted efforts of the State, the family and the community. In Article XIII, Section 1 of the Constitution, the State is mandated to give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good. The more apparent manifestation of these social inequities is the unequal

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[37] *Id.* at 578-579.

[38] *Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Sec. Gozun*, 520 Phil. 457, 476 (2006).

[39] *Department of Education, Culture and Sports v. San Diego*, 259 Phil. 1016, 1021 (1989).

distribution or access to healthcare services. To abet in alleviating this concern, the State is committed to adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost, with priority for the needs of the underprivileged sick, elderly, disabled, women, and children.[40]

In the same manner, the family and the community have equally significant duties to perform in reducing social inequality. The family as the basic social institution has the foremost duty to care for its elderly members.[41] On the other hand, the community, which include the private sector, is recognized as an active partner of the State in pursuing greater causes. The private sector, being recipients of the privilege to engage business in our land, utilize our goods as well as the services of our people for proprietary purposes, it is only fitting to expect their support in measures that contribute to common good. Moreover, their right to own, establish and operate economic enterprises is always subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.[42]

The Court also entertains no doubt on the legality of the method taken by the legislature to implement the declared policies of the subject laws, that is, to impose discounts on the medical services and purchases of senior citizens and PWDs and to treat the said discounts as tax deduction rather than tax credit. The measure is fair and reasonable and no credible proof was presented to prove the claim that it was confiscatory. To be considered confiscatory, there must be *taking* of property without just compensation.

Illuminating on this point is the discussion of the Court on the concept of taking in *City of Manila v. Hon. Laguio, Jr.*,[43] *viz.*:

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[40] 1987 CONSTITUTION, Article XIII, Section 11.

[41] 1987 CONSTITUTION, Article XV, Section 4.

[42] 1987 CONSTITUTION, Article XII, Section 6.

[43] 495 Phil. 289 (2005).

There are two different types of taking that can be identified. A "possessory" taking occurs when the government confiscates or physically occupies property. A "regulatory" taking occurs when the government's regulation leaves no reasonable economically viable use of the property.

x x x x x x x x x

No formula or rule can be devised to answer the questions of what is too far and when regulation becomes a taking. In *Mahon*, Justice Holmes recognized that it was "a question of degree and therefore cannot be disposed of by general propositions." On many other occasions as well, the U.S. Supreme Court has said that the issue of when regulation constitutes a taking is a matter of considering the facts in each case. x x x.

What is crucial in judicial consideration of regulatory takings is that government regulation is a taking if it leaves no reasonable economically viable use of property in a manner that interferes with reasonable expectations for use. A regulation that permanently denies all economically beneficial or productive use of land is, from the owner's point of view, equivalent to a "taking" unless principles of nuisance or property law that existed when the owner acquired the land make the use prohibitable. When the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking.

x x x x x x x x x

A restriction on use of property may also constitute a 'taking" if not reasonably necessary to the effectuation of a substantial public purpose or if it has an unduly harsh impact on the distinct investment-backed expectations of the owner.[44] (Citations omitted)

The petitioner herein attempts to prove its claim that the pertinent provisions of R.A. Nos. 9257 and 9442 amount to taking by presenting financial statements purportedly showing financial losses incurred by them due to the adoption of the tax deduction scheme.

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[44] *Id.* at 320-321.

For the petitioner's clarification, the presentation of the financial statement is not of compelling significance in justifying its claim for just compensation. What is imperative is for it to establish that there was taking in the constitutional sense or that, in the imposition of the mandatory discount, the power exercised by the state was eminent domain.

According to *Republic of the Philippines v. Vda. de Castellvi*,[45] five circumstances must be present in order to qualify "taking" as an exercise of eminent domain. *First*, the expropriator must enter a private property. *Second*, the entrance into private property must be for more than a momentary period. *Third*, the entry into the property should be under warrant or color of legal authority. *Fourth*, the property must be devoted to a public use or otherwise informally appropriated or injuriously affected. *Fifth*, the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.[46]

The first requirement speaks of entry into a private property which clearly does not obtain in this case. There is no private property that is invaded or appropriated by the State. As it is, the petitioner precipitately deemed future profits as private property and then proceeded to argue that the State took it away without full compensation. This seemed preposterous considering that the subject of what the petitioner supposed as taking was not even earned profits but merely an expectation of profits, which may not even occur. For obvious reasons, there cannot be taking of a contingency or of a mere possibility because it lacks physical existence that is necessary before there could be any taking. Further, it is impossible to quantify the compensation for the loss of supposed profits before it is earned.

The supposed taking also lacked the characteristics of permanence[47] and consistency. The presence of these

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[45] 157 Phil. 329 (1974).

[46] *Id.* at 345-346.

[47] See Concurring Opinion of Associate Justice Lucas P. Bersamin in *Manila Memorial Park, Inc., et al. v. Secretary of the DSWD, et al.*, *supra* note 36, at 614.

characteristics is significant because they can establish that the effect of the questioned provisions is the same on all establishments and those losses are indeed its unavoidable consequence. But apparently these indications are wanting in this case. The reason is that the impact on the establishments varies depending on their response to the changes brought about by the subject provisions. To be clear, establishments are not prevented from adjusting their prices to accommodate the effects of the granting of the discount and retain their profitability while being fully compliant to the laws. It follows that losses are not inevitable because establishments are free to take business measures to accommodate the contingency. Lacking in permanence and consistency, there can be no taking in the constitutional sense. There cannot be taking in one establishment and none in another, such that the former can claim compensation but the other may not. Simply told, there is no taking to justify compensation; there is only poor business decision to blame.

There is also no ousting of the owner or deprivation of ownership. Establishments are neither divested of ownership of any of their properties nor is anything forcibly taken from them. They remain the owner of their goods and their profit or loss still depends on the performance of their sales.

Apart from the foregoing, covered establishments are also provided with a mechanism to recoup the amount of discounts they grant the senior citizens and PWDs. It is provided in Section 4(a) of R.A. No. 9257 and Section 32 of R.A. No. 9442 that establishments may claim the discounts as "tax deduction based on the net cost of the goods sold or services rendered." Basically, whatever amount was given as discount, covered establishments may claim an equal amount as an expense or tax deduction. The trouble is that the petitioner, in protesting the change in the tax treatment of the discounts, apparently seeks tax incentive and not merely a return of the amount given as discounts. It premised its interpretation of *financial losses* in terms of the effect of the change in the tax treatment of the discount on its tax liability; hence, the claim that the measure was confiscatory. However, as mentioned earlier in the

discussion, loss of profits is not the inevitable result of the change in tax treatment of the discounts; it is more appropriately a consequence of poor business decision.

It bears emphasizing that the law does not place a cap on the amount of mark up that covered establishments may impose on their items. This rests on the discretion of the establishment which, of course, is expected to put in the price of the overhead costs, expectation of profits and other considerations into the selling price of an item. In a simple illustration, here is *Drug A,* with acquisition cost of ₱8.00, and selling price of ₱10.00. Then comes a law that imposes 20% on senior citizens and PWDs, which affected Establishments 1, 2 and 3. Let us suppose that the approximate number of patrons who purchases *Drug A* is 100, half of which are senior citizens and PWDs. Before the passage of the law, all of the establishments are earning the same amount from profit from the sale of *Drug A, viz.*:

Before the passage of the law:

Drug A

Acquisition cost	₱8.00
Selling price	₱10.00
Number of Patrons	100

Sales:

100 x ₱10.00 = ₱1,000.00

Profit: ₱200.00

After the passage of the law, the three establishments reacted differently. Establishment 1 was passive and maintained the price of *Drug A* at ₱8.00 which understandably resulted in diminution of profits.

Establishment 1

Drug A

Acquisition cost	₱8.00
Selling price	₱10.00
Number of Patrons	100
Senior Citizens/PWD	50

Sales:

100 x ₱10.00 = ₱1,000.00

Deduction: ₱100.00

Profit: ₱100.00

On the other hand, Establishment 2, mindful that the new law will affect the profitability of the business, made a calculated decision by increasing the mark up of *Drug A* to ₱3.20, instead of only ₱2.00. This brought a positive result to the earnings of the company.

Establishment 2

Drug A

Acquisition cost	₱8.00
Selling price	₱11.20
Number of Patrons	100
Senior Citizens/PWD	50

Sales:

100 x ₱11.20 = ₱1,120.00

Deduction: ₱112.00

Profit: ₱208.00

For its part, Establishment 3 raised the mark up on *Drug A* to only ₱3.00 just to even out the effect of the law. This measure left a negligible effect on its profit, but Establishment 3 took it as a social duty to share in the cause being promoted by the government while still maintaining profitability.

Establishment 3

Drug A

Acquisition cost	₱8.00
Selling price	₱11.00
Number of Patrons	100
Senior Citizens/PWD	50

Sales:

100 x ₱11.00 = ₱1,100.00

Deduction: ₱110.00

Profit: ₱190.00

The foregoing demonstrates that it is not the law *per se* which occasioned the losses in the covered establishments but bad business judgment. One of the main considerations in making business decisions is the law because its effect is widespread and inevitable. Literally, anything can be a subject of legislation. It is therefore incumbent upon business managers to cover this contingency and consider it in making business strategies. As shown in the illustration, the better responses were exemplified by Establishments 2 and 3 which promptly put in the additional costs brought about by the law into the price of *Drug A*. In doing so, they were able to maintain the profitability of the business, even earning some more, while at the same time being fully compliant with the law. This is not to mention that the illustration is even too simplistic and not the most ideal since it dealt only with a single drug being purchased by both regular patrons and senior citizens and PWDs. It did not consider the accumulated profits from the other medical and non-medical products being sold by the establishments which are expected to further curb the effect of the granting of the discounts in the business.

It is therefore unthinkable how the petitioner could have suffered losses due to the mandated discounts in R.A. Nos. 9257 and 9442, when a fractional increase in the prices of items could bring the business standing at a balance even with the introduction of the subject laws. A level adjustment in the pricing of items is a reasonable business measure to take in order to adapt to the contingency. This could even make establishments earn more, as shown in the illustration, since every fractional increase n the price of covered items translates to a wider cushion to taper off the effect of the granting of discounts and ultimately results to additional profits gained from the purchases of the same items by regular patrons who are not entitled to the discount.

Clearly, the effect of the subject laws in the financial standing of covered companies depends largely on how they respond and forge a balance between profitability and their sense of social responsibility. The adaptation is entirely up to them and they are not powerless to make adjustments to accommodate the subject legislations.

Still, the petitioner argues that the law is confiscatory in the sense that the State takes away a portion of its supposed profits which could have gone into its coffers and utilizes it for public purpose. The petitioner claims that the action of the State amounts to taking for which it should be compensated.

To reiterate, the subject provisions only affect the petitioner's right to profit, and not earned profits. Unfortunately for the petitioner, the right to profit is not a vested right or an entitlement that has accrued on the person or entity such that its invasion or deprivation warrants compensation. Vested rights are "fixed, unalterable, or irrevocable."[48] More extensively, they are depicted as follows:

> **Rights** which have so completely and definitely accrued to or settled in a person that they are not subject to be defeated or cancelled by the act of any other private person, and which it is **right** and equitable that the government should recognize and protect, as being lawful in themselves, and settled according to the then current rules of law, and of which the individual could not be deprived arbitrarily without injustice, or of which he could not justly be deprived otherwise than by the established methods of procedure and for the public welfare. x x x A **right** is not 'vested' unless it is more than a mere expectation based on the anticipated continuance of present laws; it must be an established interest in property, not open to doubt. x x x To be vested in its accurate legal sense, a **right** must be complete and consummated, and one of which the person to whom it belongs cannot be divested without his consent. x x x.[49] (Emphasis ours)

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[48] *Luque, et al. v. Hon. Villegas, etc., et al.*, 141 Phil. 108, 118 (1969).

[49] *Cartwright v. Public Serv. Co.*, 66 N.M. 64, 1958-NMSC-134, 343 P.2d 654, 1959 N.M. LEXIS 944 (N.M. 1959).

Right to profits does not give the petitioner the cause of action to ask for just compensation, it being only an inchoate right or one that has not fully developed[50] and therefore cannot be claimed as one's own. An inchoate right is a mere expectation, which may or may not come into existence. It is contingent as it only comes "into existence on an event or condition which may not happen or be performed until some other event may prevent their vesting."[51] Certainly, the petitioner cannot claim confiscation or taking of something that has yet to exist. It cannot claim deprivation of profit before the consummation of a sale and the purchase by a senior citizen or PWD.

Right to profit is not an accrued right; it is not fixed, absolute nor indefeasible. It does not come into being until the occurrence or realization of a condition precedent. It is a mere "contingency that might never eventuate into a right. It stands for a mere possibility of profit but nothing might ever be payable under it."[52]

The inchoate nature of the right to profit precludes the possibility of compensation because it lacks the quality or characteristic which is necessary before any act of taking or expropriation can be effected. Moreover, there is no yardstick fitting to quantify a contingency or to determine compensation for a mere possibility. Certainly, "taking" presupposes the existence of a subject that has a quantifiable or determinable value, characteristics which a mere contingency does not possess.

Anent the question regarding the shift from tax credit to tax deduction, suffice it is to say that it is within the province of Congress to do so in the exercise of its legislative power. It has the authority to choose the subject of legislation, outline the effective measures to achieve its declared policies and even

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[50] Concurring and Dissenting Opinion of Associate Justice Marvic M.V.F. Leonen, *Manila Memorial Park, Inc., et al. v. Secretary of the DSWD, et al.*, *supra* note 36, at 641.

[51] *Cartwright v. Public Serv. Co.*, *supra* note 49.

[52] *Fredrick v. Chicago*, 221 A.D. 588, 224 N.Y.S. 629, 1927 N.Y. App. Div. LEXIS 6510.

impose penalties in case of non-compliance. It has the sole discretion to decide which policies to pursue and devise means to achieve them, and courts often do not interfere in this exercise for as long as it does not transcend constitutional limitations. "In performing this duty, the legislature has no guide but its judgment and discretion and the wisdom of experience."[53] In *Carter v. Carter Coal Co*.,[54] legislative discretion has been described as follows:

> **Legislative** congressional **discretion** begins with the choice of means, and ends with the adoption of methods and details to carry the delegated powers into effect. x x x [W]hile the powers are rigidly limited to the enumerations of the Constitution, the means which may be employed to carry the powers into effect are not restricted, save that they must be appropriate, plainly adapted to the end, and not prohibited by, but consistent with, the letter and spirit of the Constitution. x x x.[55] (Emphasis ours)

Corollary, whether to treat the discount as a tax deduction or tax credit is a matter addressed to the wisdom of the legislature. After all, it is within its prerogative to enact laws which it deems sufficient to address a specific public concern. And, in the process of legislation, a bill goes through rigorous tests of validity, necessity and sufficiency in both houses of Congress before enrolment. It undergoes close scrutiny of the members of Congress and necessarily had to surpass the arguments hurled against its passage. Thus, the presumption of validity that goes with every law as a form of deference to the process it had gone through and also to the legislature's exercise of discretion. Thus, in *Ichong, etc., et al. v. Hernandez, etc., and Sarmiento*,[56] the Court emphasized, thus:

> It must not be overlooked, in the first place, that **the legislature**, which is the constitutional repository of police power and exercises

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[53] *United States v. Borromeo*, 23 Phil. 279, 288 (1912).

[54] 298 U.S. 238, 56 S. Ct. 855, 80 L. Ed. 1160, 1936 U.S. LEXIS 950 (U.S. 1936).

[55] *Id*.

[56] 101 Phil. 1155 (1957).

the prerogative of determining the policy of the State, is by force of circumstances primarily **the judge of necessity, adequacy or reasonableness and wisdom, of any law promulgated in the exercise of the police power, or of the measures adopted to implement the public policy or to achieve public interest.** x x x.[57] (Emphasis ours)

The legislature may also grant rights and impose additional burdens. It may also regulate industries, in the exercise of police power, for the protection of the public. R.A. Nos. 9257 and 9442 are akin to regulatory laws, the issuance of which is within the ambit of police power. The minimum wage law, zoning ordinances, price control laws, laws regulating the operation of motels and hotels, laws limiting the working hours to eight, and the like fall under this category.[58]

Indeed, regulatory laws are within the category of police power measures from which affected persons or entities cannot claim exclusion or compensation. For instance, private establishments cannot protest that the imposition of the minimum wage is confiscatory since it eats up a considerable chunk of its profits or that the mandated remuneration is not commensurate for the work done. The compulsory nature of the provision for minimum wages underlies the effort of the State, as R.A. No. 6727[59] expresses it, to promote productivity-improvement and gain-sharing measures to ensure a decent standard of living for the workers and their families; to guarantee the rights of labor to its just share in the fruits of production; to enhance employment generation in the countryside through industry dispersal; and to allow business and industry reasonable returns on investment, expansion and growth, and as the Constitution expresses it, to affirm labor as a primary social economic force.[60]

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[57] *Id.* at 1165-1166.

[58] *Manila Memorial Park, Inc., et al. v. Secretary of the DSWD, et al.*, *supra* note 36, at 586.

[59] Wage Rationalization Act, approved on June 9, 1989.

[60] *Employees Confederation of the Philippines v. National Wages and Productivity Commission,* 278 Phil. 747, 755 (1991).

Similarly, the imposition of price control on staple goods in R.A. No. 7581[61] is likewise a valid exercise of police power and affected establishments cannot argue that the law was depriving them of supposed gains. The law seeks to ensure the availability of basic necessities and prime commodities at reasonable prices at all times without denying legitimate business a fair return on investment. It likewise aims to provide effective and sufficient protection to consumers against hoarding, profiteering and cartels with respect to the supply, distribution, marketing and pricing of said goods, especially during periods of calamity, emergency, widespread illegal price manipulation and other similar situations.[62]

More relevantly, in *Manila Memorial Park, Inc.*,[63] it was ruled that it is within the bounds of the police power of the state to impose burden on private entities, even if it may affect their profits, such as in the imposition of price control measures. There is no compensable taking but only a recognition of the fact that they are subject to the regulation of the State and that all personal or private interests must bow down to the more paramount interest of the State.

This notwithstanding, the regulatory power of the State does not authorize the destruction of the business. While a business may be regulated, such regulation must be within the bounds of reason, *i.e.*, the regulatory ordinance must be reasonable, and its provision cannot be oppressive amounting to an arbitrary interference with the business or calling subject of regulation. A lawful business or calling may not, under the guise of regulation, be unreasonably interfered with even by the exercise of police power.[64] After all, regulation only signifies control

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[61] The Price Act, approved on May 27, 1992.

[62] *R.A. No. 7581* (1992), Section 2.

[63] *Supra* note 36.

[64] *Acebedo Optical Company, Inc. v. Court of Appeals*, 385 Phil. 956, 970 (2000), citing *Balacuit v. Court of First Instance of Agusan del Norte and Butuan City, Branch II,* 246 Phil. 189, 204 (1988).

or restraint, it does not mean suppression or absolute prohibition. Thus, in *Philippine Communications Satellite Corporation v. Alcuaz*,[65] the Court emphasized:

> The power to regulate is not the power to destroy useful and harmless enterprises, but is the power to protect, foster, promote, preserve, and control with due regard for the interest, first and foremost, of the public, then of the utility and of its patrons. Any regulation, therefore, which operates as an effective confiscation of private property or constitutes an arbitrary or unreasonable infringement of property rights is void, because it is repugnant to the constitutional guaranties of due process and equal protection of the laws.[66] (Citation omitted)

Here, the petitioner failed to show that R.A. Nos. 9257 and 9442, under the guise of regulation, allow undue interference in an otherwise legitimate business. On the contrary, it was shown that the questioned laws do not meddle in the business or take anything from it but only regulate its realization of profits.

The subject laws do not violate the equal protection clause

The petitioner argues that R.A. Nos. 9257 and 9442 are violative of the equal protection clause in that it failed to distinguish between those who have the capacity to pay and those who do not, in granting the 20% discount. R.A. No. 9257, in particular, removed the income qualification in R.A. No. 7432 of ₱60,000.00 *per annum* before a senior citizen may be entitled to the 20% discount.

The contention lacks merit.

The petitioner's argument is dismissive of the reasonable qualification on which the subject laws were based. In *City of Manila v. Hon. Laguio Jr.*,[67] the Court emphasized:

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[65] 259 Phil. 707 (1989).

[66] *Id.* at 721-722.

[67] 495 Phil. 289 (2005).

Equal protection requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others. The guarantee means that no person or class of persons shall be denied the same protection of laws which is enjoyed by other persons or other classes in like circumstances.[68] (Citations omitted)

"The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another."[69] For a classification to be valid, (1) it must be based upon substantial distinctions, (2) it must be germane to the purposes of the law, (3) it must not be limited to existing conditions only, and (4) it must apply equally to all members of the same class.[70]

To recognize all senior citizens as a group, without distinction as to income, is a valid classification. The Constitution itself considered the elderly as a class of their own and deemed it a priority to address their needs. When the Constitution declared its intention to prioritize the predicament of the underprivileged sick, elderly, disabled, women, and children,[71] it did not make any reservation as to income, race, religion or any other personal circumstances. It was a blanket privilege afforded the group of citizens in the enumeration in view of the vulnerability of their class.

R.A. No. 9257 is an implementation of the avowed policy of the Constitution to enact measures that protect and enhance the right of all the people to human dignity, reduce social,

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[68] *Id*. at 326.

[69] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 560-561 (2004).

[70] *People v. Cayat*, 68 Phil. 12, 18 (1939).

[71] 1987 CONSTITUTION, Article XIII, Section 11.

economic, and political inequalities.[72] Specifically, it caters to the welfare of all senior citizens. The classification is based on age and therefore qualifies all who have attained the age of 60. Senior citizens are a class of their own, who are in need and should be entitled to government support, and the fact that they may still be earning for their own sustenance should not disqualify them from the privilege.

It is well to consider that our senior citizens have already reached the age when work opportunities have dwindled concurrently as their physical health. They are no longer expected to work, but there are still those who continue to work and contribute what they can to the country. Thus, to single them out and take them out of the privileges of the law for continuing to strive and earn income to fend for themselves is inimical to a welfare state that the Constitution envisions. It is tantamount to penalizing them for their persistence. It is commending indolence rather than rewarding diligence. It encourages them to become wards of the State rather than productive partners.

Our senior citizens were the laborers, professionals and overseas contract workers of the past. While some may be well to do or may have the capacity to support their sustenance, the discretion to avail of the privileges of the law is up to them. But to instantly tag them as undeserving of the privilege would be the height of ingratitude; it is an outright discrimination.

The same ratiocination may be said of the recognition of PWDs as a class in R.A. No. 9442 and in granting them discounts. It needs no further explanation that PWDs have special needs which, for most, last their entire lifetime. They constitute a class of their own, equally deserving of government support as our elderlies. While some of them maybe willing to work and earn income for themselves, their disability deters them from living their full potential. Thus, the need for assistance from the government to augment the reduced income or productivity brought about by their physical or intellectual limitations.

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[72] 1987 CONSTITUTION, Article XIII, Section 1.

There is also no question that the grant of mandatory discount is germane to the purpose of R.A. Nos. 9257 and 9442, that is, to adopt an integrated and comprehensive approach to health development and make essential goods and other social services available to all the people at affordable cost, with special priority given to the elderlies and the disabled, among others. The privileges granted by the laws ease their concerns and allow them to live more comfortably.

The subject laws also address a continuing concern of the government for the welfare of the senior citizens and PWDs. It is not some random predicament but an actual, continuing and pressing concern that requires preferential attention. Also, the laws apply to all senior citizens and PWDs, respectively, without further distinction or reservation. Without a doubt, all the elements for a valid classification were met.

The definitions of "disabilities" and "PWDs" are clear and unequivocal

Undeterred, the petitioner claims that R.A. No. 9442 is ambiguous particularly in defining the terms "disability" and "PWDs," such that it lack comprehensible standards that men of common intelligence must guess at its meaning. It likewise bewails the futility of the given safeguards to prevent abuse since government officials who are neither experts nor practitioners of medicine are given the authority to issue identification cards that authorizes the granting of the privileges under the law.

The Court disagrees.

Section 4(a) of R.A. No. 7277, the precursor of R.A. No. 9442, defines "disabled persons" as follows:

(a) ***Disabled persons*** are those suffering from restriction or different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being[.]

On the other hand, the term "PWDs" is defined in Section 5.1 of the IRR of R.A. No. 9442 as follows:

5.1. ***Persons with Disability*** are those individuals defined under Section 4 of [R.A. No.] 7277 [or] An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Persons with Disability as amended and their integration into the Mainstream of Society and for Other Purposes. This is defined as a person suffering from restriction or different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in a manner or within the range considered normal for human being. Disability shall mean (1) a physical or mental impairment that substantially limits one or more psychological, physiological or anatomical function of an individual or activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.

The foregoing definitions have a striking conformity with the definition of "PWDs" in Article 1 of the *United Nations Convention on the Rights of Persons with Disabilities* which reads:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. (Emphasis and italics ours)

The seemingly broad definition of the terms was not without good reasons. It recognizes that "disability is an evolving concept"[73] and appreciates the "diversity of PWDs."[74] The terms were given comprehensive definitions so as to accommodate the various forms of disabilities, and not confine it to a particular case as this would effectively exclude other forms of physical, intellectual or psychological impairments.

Moreover, in *Estrada v. Sandiganbayan*,[75] it was declared, thus:

A statute is not rendered uncertain and void merely because general terms are used therein, or because of the employment of terms without

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[73] *Preamble of the United Nations Convention on the Rights of Persons with Disabilities*, Section (e).

[74] *Preamble of the United Nations Convention on the Rights of Persons with Disabilities,* Section (i).

[75] 421 Phil. 290 (2001).

defining them; much less do we have to define every word we use. Besides, there is no positive constitutional or statutory command requiring the legislature to define each and every word in an enactment. Congress is not restricted in the form of expression of its will, and its inability to so define the words employed in a statute will not necessarily result in the vagueness or ambiguity of the law so long as the legislative will is clear, or at least, can be gathered from the whole act x x x.[76] (Citation omitted)

At any rate, the Court gathers no ambiguity in the provisions of R.A. No. 9442. As regards the petitioner's claim that the law lacked reasonable standards in determining the persons entitled to the discount, Section 32 thereof is on point as it identifies who may avail of the privilege and the manner of its availment. It states:

> Sec. 32. x x x
>
> The abovementioned privileges are available only to persons with disability who are Filipino citizens upon submission of any of the following as proof of his/her entitlement thereto:
>
> (I) An identification card issued by the city or municipal mayor or the barangay captain of the place where the persons with disability resides;
>
> (II) The passport of the persons with disability concerned; or
>
> (III) Transportation discount fare Identification Card (ID) issued by the National Council for the Welfare of Disabled Persons (NCWDP).

It is, however, the petitioner's contention that the foregoing authorizes government officials who had no medical background to exercise discretion in issuing identification cards to those claiming to be PWDs. It argues that the provision lends to the indiscriminate availment of the privileges even by those who are not qualified.

The petitioner's apprehension demonstrates a superficial understanding of the law and its implementing rules. To be clear, the issuance of identification cards to PWDs does not

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[76] *Id.* at 347-348.

depend on the authority of the city or municipal mayor, the DSWD or officials of the NCDA (formerly NCWDP). It is well to remember that what entitles a person to the privileges of the law is his *disability*, the fact of which he must prove to qualify. Thus, in NCDA Administrative Order (A.O.) No. 001, series of 2008,[77] it is required that the person claiming disability must submit the following requirements before he shall be issued a PWD Identification Card:

1. Two "1x 1" recent ID pictures with the names, and signatures or thumb marks at the back of the picture.
2. One (1) Valid ID
3. Document to confirm the medical or disability condition[78]

To confirm his disability, the person must obtain a medical certificate or assessment, as the case maybe, issued by a licensed private or government physician, licensed teacher or head of a business establishment attesting to his impairment. The issuing entity depends on whether the disability is apparent or non-apparent. NCDA A.O. No. 001 further provides:[79]

DISABILITY	DOCUMENT	ISSUING ENTITY
Apparent Disability	Medical Certificate	Licensed Private or Government Physician
	School Assessment	Licensed Teacher duly signed by the School Principal
	Certificate of Disability	• Head of the Business Establishment·
		• Head of Non-Government Organization
Non-Apparent Disability	Medical Certificate	Licensed Private or Government Physician

[77] Guidelines on the Issuance of Identification Card Relative to R.A. No. 9442.

[78] NCDA A.O. No. 001, series of 2008, V(A).

[79] NCDA A.O. No. 001, series of 2008, IV(D).

To provide further safeguard, the Department of Health issued A.O. No. 2009-0011, providing guidelines for the availment of the 20% discount on the purchase of medicines by PWDs. In making a purchase, the individual must present the documents enumerated in Section VI(4)(b), to wit:

> i. PWD identification card x x x
> ii. Doctor's prescription stating the name of the PWD, age, sex, address, date, generic name of the medicine, dosage form, dosage strength, quantity, signature over printed name of physician, physician's address, contact number of physician or dentist, professional license number, professional tax receipt number and narcotic license number, if applicable. To safeguard the health of PWDs and to prevent abuse of [R.A. No.] 9257, a doctor's prescription is required in the purchase of over-the-counter medicines. x x x.
> iii. Purchase booklet issued by the local social/health office to PWDs for free containing the following basic information:
>
> a) PWD ID number
> b) Booklet control number
> c) Name of PWD
> d) Sex
> e) Address
> f) Date of Birth
> g) Picture
> h) Signature of PWD
> i) Information of medicine purchased:
> i.1 Name of medicine
> i.2 Quantity
> i.3 Attending Physician
> i.4 License Number
> i.5 Servicing drug store name
> i.6 Name of dispensing pharmacist
> j) Authorization letter of the PWD x x x in case the medicine is bought by the representative or caregiver of the PWD.

The PWD identification card also has a validity period of only three years which facilitate in the monitoring of those who may need continued support and who have been relieved of their disability, and therefore may be taken out of the coverage of the law.

At any rate, the law has penal provisions which give concerned establishments the option to file a case against those abusing the privilege. Section 46(b) of R.A. No. 9442 provides that "[a]ny person who abuses the privileges granted herein shall be punished with imprisonment of not less than six months or a fine of not less than Five Thousand pesos (₱5,000.00), but not more than Fifty Thousand pesos (₱50,000.00), or both, at the discretion of the court." Thus, concerned establishments, together with the proper government agencies, must actively participate in monitoring compliance with the law so that only the intended beneficiaries of the law can avail of the privileges.

Indubitably, the law is clear and unequivocal, and the petitioner's claim of vagueness to cast uncertainty in the validity of the law does not stand.

WHEREFORE, in view of the foregoing disquisition, Section 4(a) of Republic Act No. 9257 and Section 32 of Republic Act No. 9442 are hereby declared **CONSTITUTIONAL**.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Mendoza, Caguioa, Martires, and *Tijam, JJ.*, concur.

Carpio and Leonen, JJ., see dissenting opinion.

Del Castillo, Perlas-Bernabe, and *Jardeleza, JJ.*, no part.

CONCURRING AND DISSENTING OPINION

LEONEN, *J.*:

This case involves a Petition for Review on Certiorari questioning the constitutionality of Section 4(a) of Republic Act No. 9257 (Expanded Senior Citizens Act of 2003), Section 32 of Republic Act No. 9442 (Magna Carta of Persons with Disability), and Sections 5.1 and 6.1.d of the Implementing Rules and Regulations of Republic Act No. 9442.

I concur in the *ponencia's* finding that the subject provisions are constitutional.

In *Manila Memorial Park, Inc., et al. vs. Secretary of Department of Social Welfare and Development, et al.*,[1] this Court has ruled on the constitutionality of Republic Act No. 9257, and the validity of the 20% discount granted to senior citizens and of the Tax Deduction Scheme, in which the cost of the discount is allowed as a deduction from the establishment's gross income.[2]

This case presents the same questions, except it includes as an issue the grant of the same benefits to persons with disability.

Thus, I restate my opinion in *Manila Memorial Park*.[3] I concur that the subject provisions are constitutional. The grant of the 20% discount to senior citizens and persons with disability is a valid exercise of police power. However, I opine that the Tax Deduction Scheme is an exercise of the State's power of taxation. Moreover, I insist that establishments are not entitled to just compensation, whether there is proof of loss of profits or "oppressive taking," as the subject of the taking is not property, but a mere inchoate right.

I

The subject provisions grant senior citizens and persons with disability a 20% discount on medicine purchases.[4]

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[1] 722 Phil. 538 (2013) [Per *J*. Del Castillo, *En Banc*].

[2] *Id*. at 602.

[3] Dissenting Opinion of *J*. Leonen in *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development,* 722 Phil. 538, 621-644 (2013) [Per *J*. Del Castillo, *En Banc*].

[4] Rep. Act No. 9257, Sec. 4(a) or the Expanded Senior Citizens Act of 2003, Rep. Act No. 9442, Sec. 32 or the Magna Carta of Persons with Disability, and Implementing Rules and Regulations of Rep. Act No. 9442, Sec. 5.1 and 6.1.d.

Establishments giving the discount may claim the costs of the discount as tax deductions from their gross income.[5]

For senior citizens, Section 4(a) of Republic Act No. 9257[6] provides:

SECTION 4. *Privileges for the Senior Citizens*. — The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishments, restaurants and recreation centers, and *purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens*, including funeral and burial services for the death of senior citizens;

. . . . . .

The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: Provided, *That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. Provided, further*, That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended. (Emphasis supplied)

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[5] Rep. Act No. 9257, Sec. 4(a), Rep. Act No. 9442, Sec. 32, and Implementing Rules and Regulations of Rep. Act No. 9442, Sec. 5.1 and 6.1.d.

[6] Republic Act No. 9257 amended Republic Act No. 7432 (*Senior Citizens Act*) which had an income ceiling for the grant of the discount to senior citizens and which allowed establishments to claim the cost of the discount as a tax credit.

Rep. Act No. 7432, Sec. 4 provides:

Section 4. *Privileges for the Senior Citizens*. — The senior citizens shall be entitled to the following:

a) the grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishment, restaurants and recreation centers and purchase of medicine anywhere in the country: *Provided*, That private establishments may claim the cost as tax credit[.]

For persons with disability, Republic Act No. 9442[7] amended Republic Act No. 7277 (Magna Carta for Disabled Persons) to grant persons with disability a 20% discount on the purchase of medicines. It also allowed establishments to deduct the cost of the discount from their gross income:

> SECTION 32. Persons with disability shall be entitled to the following:
>
> . . . .
>
> (c) At least twenty percent (20%) discount for the purchase of medicines in all drugstores for the exclusive use or enjoyment of persons with disability;
>
> . . . .
>
> *The establishments may claim the discounts granted in sub-sections (a), (b), (c), (e), (f) and (g) as tax deductions based on the net cost of the goods sold or services rendered: Provided, however, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted: Provided, further*, That the total amount of the claimed tax deduction net of value-added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code (NIRC), as amended. (Emphasis supplied)

Thus, the Department of Social Welfare and Development, the Department of Education, the Department of Finance, the Department of Tourism, and the Department of Transportation promulgated the Implementing Rules and Regulations of Republic Act No. 9442 (Implementing Rules). Sections 5.1 and 6.1.d of the Implementing Rules state:

> 5.1 *Persons with Disability* — are those individuals defined under Section 4 of RA 7277 "An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Persons with Disability as amended and Their Integration into the Mainstream of Society and for Other Purposes". This is defined as a person suffering from restriction or different abilities, as a result of a mental, physical or *sensory impairment, to perform an activity in a manner or within the range*

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[7] An Act Amending Republic Act No. 7277 (2007).

considered normal for human being. Disability shall mean (1) a physical or mental impairment that substantially limits one or more psychological, physiological or anatomical function of an individual or activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.

SECTION 6. *Other Privileges and Incentives.* — Persons with disability shall be entitled to the following:

6.1 *Discounts from All Establishments* — At least twenty percent (20%) discount from all establishments relative to the utilization of all services in hotels and similar lodging establishments, restaurants and recreation centers for the exclusive use or enjoyment of persons with disability.

. . . . . .

6.1.d *Purchase of Medicine* — at least twenty percent (20%) discount on the purchase of medicine for the exclusive use and enjoyment of persons with disability. All drug stores, hospitals, pharmacies, clinics and other similar establishments selling medicines are required to provide at least twenty percent (20%) discount subject to the guidelines issued by DOH and PHILHEALTH. (Emphasis supplied)

II

In *Manila Memorial Park,*[8] this Court already upheld the constitutionality of Republic Act No. 9257 and of the Tax Deduction Scheme. It strengthened its ruling in *Carlos Superdrug Corporation v. Department of Social Welfare and Development.*[9] It has held that the tax treatment is a valid exercise of police power:

The 20% discount is intended to improve the welfare of senior citizens who, at their age, are less likely to be gainfully employed, more prone to illnesses and other disabilities, and, thus, in need of subsidy in purchasing basic commodities. It may not be amiss to mention also that the discount serves to honor senior citizens who presumably spent the productive years of their lives on contributing

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[8] 722 Phil. 538 (2013) [Per *J.* Del Castillo, *En Banc*].

[9] 553 Phil. 120 (2007) [Per *J.* Azcuna, *En Banc*].

to the development and progress of the nation. This distinct cultural Filipino practice of honoring the elderly is an integral part of this law.

As to its nature and effects, the 20% discount is a regulation affecting the ability of private establishments to price their products and services relative to a special class of individuals, senior citizens, for which the Constitution affords preferential concern. In turn, this affects the amount of profits or income/gross sales that a private establishment can derive from senior citizens. In other words, the subject regulation affects the pricing, and, hence, the profitability of a private establishment. However, it does not purport to appropriate or burden specific properties, used in the operation or conduct of the business of private establishments, for the use or benefit of the public, or senior citizens for that matter, but merely regulates the pricing of goods and services relative to, and the amount of profits or income/gross sales that such private establishments may derive from, senior citizens.

. . . . . .

On its face, therefore, the subject regulation is a police power measure.[10]

I agree with the ponencia in reiterating this ruling in the present case. The imposition of the 20% discount to senior citizens and persons with disability is a valid exercise of police power. It is a regulatory function to improve the public welfare, which imposes a differentiated pricing system for two (2) types of customers: (1) those who are subject to the regular price, and (2) those who are senior citizens and persons with disability. The public purpose in granting this discount to the two (2) classifications cannot be denied.

However, as I maintained in my separate opinion in *Manila Memorial Park,* the Tax Deduction Scheme is an exercise of the State's power to tax.[11]

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[10] *Id.* at 578–579.

[11] Dissenting Opinion of *J.* Leonen in *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development*, 722 Phil. 538, 632-636 (2013) [Per *J.* Del Castillo, *En Banc*].

The power of taxation is an inherent and indispensable power of the State.[12] As taxes are the "lifeblood of the government", the power of the legislature is unlimited and plenary.[13] The legislature is given a wide range of discretion in determining what to tax, the purpose of the tax, how much the tax will be, who will be taxed, and where the tax will be imposed.[14]

Included in this discretion is the power to determine the *method* of collection of the taxes imposed.[15] In *Abakada Guro Party List v. Ermita*:[16]

> The power of the State to make reasonable and natural classifications for the purposes of taxation has long been established. Whether it relates to the subject of taxation, the kind of property, the rates to be levied, or the amounts to be raised, the methods of assessment, valuation and collection, the State's power is entitled to presumption of validity. As a rule, the judiciary will not interfere with such power absent a clear showing of unreasonableness, discrimination, or arbitrariness.[17]

The State's power to tax is limited by the Constitution.[18] Taxes must be uniform and equitable,[19] and must not be

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[12] *Chamber of Real Estate and Builders' Association, Inc. v. Romulo,* 628 Phil. 508, 529-530 (2010) [Per *J.* Corona, *En Banc*].

[13] *Id.*

[14] *Id.*

[15] *Abakada Guro Party List v. Ermita*, 506 Phil. 1, 306 (2005) [Per *J.* Austria-Martinez, *En Banc*].

[16] 506 Phil. 1 (2005) [Per *J.* Austria-Martinez, *En Banc*].

[17] *Abakada Guro Party List v. Ermita,* 506 Phil. 1, 306 (2005) [Per *J.* Austria-Martinez, *En Banc*].

[18] *Chamber of Real Estate and Builders' Association, Inc. v. Romulo,* 628 Phil. 508, 529-530 (2010) [Per *J.* Corona, *En Banc*].

[19] CONST. (1987), Art. VI, Sec. 28 provides:

> Section 28. (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.n...

confiscatory or arbitrary.[20] It must be "exercised reasonably and in accordance with the prescribed procedure."[21]

Nonetheless, the exercise of the power to tax is presumed valid absent any proof of violation of these limitations.[22] In *Chamber of Real Estate and Builders' Association, Inc. v. Romulo:*[23]

> The principal check against its abuse is to be found only in the responsibility of the legislature (which imposes the tax) to its constituency who are to pay it. Nevertheless, it is circumscribed by constitutional limitations. At the same time, like any other statute, tax legislation carries a presumption of constitutionality.
>
> The constitutional safeguard of due process is embodied in the fiat "[no] person shall be deprived of life, liberty or property without due process of law." In *Sison, Jr. v. Ancheta, et al.,* we held that the due process clause may properly be invoked to invalidate, in appropriate cases, a revenue measure when it amounts to a confiscation of property. *But in the same case, we also explained that we will not strike down a revenue measure as unconstitutional (for being violative of the due process clause) on the mere allegation of arbitrariness by the taxpayer. There must be a factual foundation to such an unconstitutional taint.* This merely adheres to the authoritative doctrine that, where the due process clause is invoked, considering that it is not a fixed rule but rather a broad standard, *there is a need for proof of such persuasive character.*[24] (Emphasis supplied)

The determination that the cost of the 20% discount will be recovered as a tax deduction instead of a tax credit is within the legislative's power to tax.[25] It is a determination of the

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[20] *Commissioner v. Algue, Inc.*, 241 Phil. 829, 836 (1988) [Per *J.* Cruz, First Division].

[21] *Id*.

[22] *Chamber of Real Estate and Builders' Association, Inc. v. Romulo,* 628 Phil. 508, 530 (2010) [Per *J.* Corona, *En Banc*].

[23] *Id*.

[24] *Id*.

[25] Dissenting Opinion of *J.* Leonen in *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development,* 722 Phil. 538, 633 (2013) [Per *J.* Del Castillo, *En Banc*].

method of collection of taxes.[26] The legislative has the power to determine if particular costs should be treated as deductions or if it entitles taxpayers to credits.[27]

In this case, the Congress deemed the tax deduction as the better option. There is no showing that this option is violative of any of the constitutional limitations on the power to tax.

The Tax Deduction Scheme is uniform and equitable. Uniformity of taxation means that all subjects of taxation similarly situated are to be treated alike both in privileges and liabilities.[28] The taxes are uniform if: (1) the standards used are substantial and not arbitrary, (2) the categorization is germane to the purpose of the law, (3) the law applies, all things being equal, to both present and future conditions, and (4) the classification applies equally well to all those belonging to the same class.[29] Since the 20% discount applies to all senior citizens and persons with disability equally, and the tax deduction scheme applies to all establishments granting the discounts, there is no issue on the uniformity of the tax measure.

Likewise, the tax deduction is not confiscatory or arbitrary. While the establishments cannot recover the full cost of the granted discount, they are still not at a full loss as they may claim the cost as a tax deduction from their gross income, and they are free to adjust prices and costs of their products.

III

There is no merit in the contention that the State deprived them of their profits. Establishments can always increase their price to recover their costs and increase their profitability. They can avoid losses altogether such that it can be said that the State took nothing from them.

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[26] *Id.*

[27] *Id.*

[28] *Tan v. Del Rosario, Jr.*, 307 Phil. 342, 349-350 (1994) [Per *J.* Vitug, *En Banc*].

[29] *Id.*

My opinion in *Manila Memorial Park* discussed the impact of the senior citizen's discount to an establishment's revenue for the sale of memorial lots.[30]

This same principle applies to the sale of medicine to senior citizens and persons with disability. Revenue still depends on the price, quantity, and costs of the items sold.[31]

To illustrate, if Company XYZ sells medicine, and for the sake of argument, we assume that the medicine is acquired at zero cost, revenue is acquired multiplying the price and the quantity sold.[32] Thus:

R= P x Q

Where:
R = Revenue
P = Price per unit
Q = Quantity sold

Before the discounts are granted to senior citizens and persons with disability, let us assume that Company XYZ sells 16,000 bottles of antibiotic syrup at the price of ₱100.00. Its profit is thus ₱1,600,000.00:

R = P x Q
R = ₱100.00 x 16,000
R = ₱1,600,000.00

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[30] Dissenting Opinion of *J.* Leonen in *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development,* 722 Phil. 538, 627-632 (2013) [Per *J.* Del Castillo, *En Banc*].

[31] *Id*.

[32] *Id*.

Footnote 23: Revenue in the economic sense is not usually subject to such simplistic treatment. Costs must be taken into consideration. In economics, to evaluate the combination of factors to be used by a profit-maximizing firm, an analysis of the marginal product of inputs is compared to the marginal revenue. Economists usually compare if an additional unit of labor will contribute to additional productivity. For a more comprehensive explanation, refer to P.A. SAMUELSON AND W.D. NORDHAUS, ECONOMICS 225-239 (Eighteenth Edition, 2005).

Assuming that out of the 16,000 bottles sold, 2,200 bottles are bought by senior citizens and 1,000 bottles are purchased by persons with disability. Thus, 12,800 bottles are bought by ordinary customers.

The subject provisions require that a 20% discount be given to senior citizens and persons with disability. Necessarily, there will be two (2) types of revenue received by Company XYZ: (1) revenue from ordinary customers, and (2) revenue from senior citizens and persons with disability. Thus, a bottle of antibiotic syrup will be sold to ordinary customers at ₱100.00, and to senior citizens and persons with disability at only ₱80.00.

The formula of the revenue of Company XYZ then becomes:

$R_T = R_{SD} + R_C$
$R_{SD} = P_{SD} \times Q_{SD}$
$R_C = P_C \times Q_C$
$R_T = (P_{SD} \times Q_{SD}) + (P_C \times Q_C)$

Where	RT	=	Total Revenue
	R_{SD}	=	Revenue from Senior Citizens and Persons with Disability
	R_C	=	Revenue from Ordinary Customers
	P_{SD}	=	Price per Unit for Senior Citizens and Persons with Disability
	Q_{SD}	=	Quantity Sold to Senior Citizens and Persons with Disability
	P_C	=	Price for Ordinary Customers per Unit
	Q_C	=	Quantity Sold to Ordinary Customers

Given this equation, the total revenue of Company XYZ becomes ₱1,536,000.00:

$R_{T1} = R_{SD} + R_C$
$R_{T1} = (P_{SD} \times Q_{SD}) + (P_C \times Q_C)$
$R_{T1} = (80 \times 3,200) + (100 \times 12,800)$
$R_{T1} = 256,000 + 1,280,000$
R_{T1} = ₱1,536,000.00

Naturally, the revenue decreases after applying the discounts. However, the subject provisions do not prevent Company XYZ from increasing its price to maintain its profitability.[33] Thus, assuming it increases its price by ₱10.00, the revenue becomes ₱1,689,600, computed as follows:

$R_{T2} = (P_{SD} \times Q_{SD}) + (P_C \times Q_C)$
$R_{T2} = (88 \times 3{,}200) + (110 \times 12{,}800)$
$R_{T2} = 281{,}600 + 1{,}408{,}000$
R_{T2} = ₱1,689,600.00

Clearly, an increase in the item's price results to an increase in the establishment's profitability, even after the implementation of the 20% discount. As shown in the example, the price increase may even be less than the discount given to the senior citizens and persons with disability.

The change in the price also augments the tax implications of the subject provisions. If we treat the discount as a *tax credit* after the implementation of the subject provisions, Company XYZ will have the net income of ₱1,335,480.00:

Gross Income (R_{T1})	₱1,536,000
Less: Deductions	(600,000)
Taxable Income	936,000
Income Tax Rate	₱125,000 + 32% of excess over 500,000
Income Tax Liability	264,520
Less: Discount for Senior Citizens/Persons with Disability (Tax Credit)	(64,000)
Final Income Tax Liability	200,520
Net Income	**₱1,335,480**

[33] Dissenting Opinion of *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development,* 722 Phil. 538, 627–632 (2013) [Per *J.* Del Castillo, *En Banc*].

Footnote 24: To determine the price for both ordinary customers and senior citizens and persons with disability that will retain the same level of profitability, the formula for the price for ordinary customers is $P_C = R_0/(0.8Q_S + Q_C)$ where R_0 is the total revenue before the senior citizen discount was given.

Without the adjustments, the net income in the Tax Deduction Scheme is less than the net income if the discounts are treated as tax credits. Thus, if the discount is treated as a *tax deduction*, its income is ₱1,291,960.00:

Gross Income (R_{T1})	₱1,536,000
Less: Deductions	(600,000)
Less: Discount for Senior Citizens and Persons with Disability	(64,000)
Taxable Income	872,000
Income Tax Rate	₱125,000 + 32% of excess over ₱500,000
Income Tax Liability	244,040
Less: Discount for Senior Citizens/Persons with Disability (Tax Credit)	0
Final Income Tax Liability	244,040

Net Income ₱1,291,960

However, if the price is adjusted as discussed in the earlier example, the net income becomes:

Gross Income (R_{T2})	₱1,689,600
Less: Deductions	(600,000)
Less: Discount for Senior Citizens and Persons with Disability	(70,400)
Taxable Income	1,019,200
Income Tax Rate	₱ 125,000 + 32% of excess over ₱500,000
Income Tax Liability	291,144
Less: Discount for Senior Citizen/Person with Disability (Tax Credit)	0
Final Income Tax Liability	291,144
Net Income	**₱1,398,456**

Thus, the tax deduction scheme can still allow the improvement of net income in case of a price increase. Losses are not unavoidable. By increasing the price of the items, establishments

may be able to gain more. Moreover, bettering the efficiency of the business by minimizing costs may maintain or improve profits.[34] In such cases, there is no confiscatory taking that justifies the payment of just compensation.

IV

In any case, I reiterate that whether or not there is proof of loss of profits, establishments are still not entitled to just compensation under the power of eminent domain.

Petitioners submitted financial statements to prove that they incurred losses because of the imposition of the subject provisions. They thus claim they are entitled to just compensation.

In *Manila Memorial Park*, it was held that Republic Act No. 9257 was not shown to have been unreasonable, oppressive or confiscatory enough as to amount to a "taking" of private property subject to just compensation.[35] It emphasized that there was no proof of the losses incurred, and that petitioners merely relied on a hypothetical computation:

> The impact or effect of a regulation, such as the one under consideration, must, thus, be determined on a case-to-case basis. Whether that line between permissible regulation under police power and "taking" under eminent domain has been crossed must, under the specific circumstances of this case, be subject to proof and the one assailing the constitutionality of the regulation carries the heavy burden of proving that the measure is unreasonable, oppressive or

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[34] Dissenting Opinion of *J.* Leonen in *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development,* 722 Phil. 538, 627-632 (2013) [Per *J.* Del Castillo, *En Banc*].

Footnote 26: Another algebraic formula will show us how costs should be minimized to retain the same level of profitability. The formula is $C_1 = C_0 - [(20\% \times P_C) \times Q_S]$ where:

C_1 = Cost of producing all quantities after the discount policy
C_0 = Cost of producing all quantities before the discount policy
P_C = Price per unit for Ordinary Citizens
Q_S = Quantity Sold to Senior Citizens

[35] *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development,* 722 Phil. 538, 581 (2013) [Per *J.* Del Castillo, *En Banc*].

confiscatory. The time-honored rule is that the burden of proving the unconstitutionality of a law rests upon the one assailing it and "the burden becomes heavier when police power is at issue."

. . . . . .

We adopted a similar line of reasoning in *Carlos Superdrug Corporation* when we ruled that petitioners therein failed to prove that the 20% discount is arbitrary, oppressive or confiscatory. We noted that no evidence, such as a financial report, to establish the impact of the 20% discount on the overall profitability of petitioners was presented in order to show that they would be operating at a loss due to the subject regulation or that the continued implementation of the law would be unconscionably detrimental to the business operations of petitioners. In the case at bar, petitioners proceeded with a hypothetical computation of the alleged loss that they will suffer similar to what the petitioners in *Carlos Superdrug Corporation* did. Petitioners went directly to this Court without first establishing the factual bases of their claims. Hence, the present recourse must, likewise, fail.

. . . . . .

In sum, we sustain our ruling in *Carlos Superdrug Corporation* that the 20% senior citizen discount and tax deduction scheme are valid exercises of police power of the State absent a clear showing that it is arbitrary, oppressive or confiscatory.[36]

The *ponencia* reiterated this rule in this case. It found that it must be *proven* that the State regulation is so oppressive as to amount to a compensable taking. In applying this principle to the case at bar, it held that petitioners *failed to prove the oppressive and confiscatory nature of the subject provisions.* The financial statements were deemed not enough to show the confiscatory taking warranting just compensation.[37]

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[36] *Id.* at 581-583.

[37] *Ponencia*, pp. 17-18; The ponencia found that the financial statements of the petitioners do not show that their incurred losses were due to the discounts. It noted that what depeleted the income of the company was its direct costs and operating expenses. It also observed that the records did not show the percentage of regular customers vis-a-vis the senior citizens and persons with disability. Additionally, it found that the entire sales and

I maintain my opinion in *Manila Memorial Park.* I disagree insofar as the rule is premised on the *insufficient proof* of the losses caused by the discount.

I opine that whether or not there is sufficient proof of actual losses, there is no compensable taking. The provisions are still not an exercise of the power of eminent domain that requires the payment of just compensation.

The power of eminent domain is found in the Constitution under Article III, Section 9 of the Constitution: "Private property shall not be taken for public use without just compensation."

The requisites for the exercise of eminent domain are: (1) there must be a genuine necessity for its exercise;[38] (2) what is taken must be private *property*; (3) there is taking in the constitutional sense;[39] (4) the taking is for public use;[40] and (5) there must be payment of just compensation.[41]

The difference between police power and eminent domain was discussed in *Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Gozun*:[42]

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other services offered to the public must be considered. A singular transaction or the purchases made by senior citizens and persons with disability alone cannot be the sole basis of the law's effect on the profitability of the business. It likewise pointed out that the petitioners did not show how it adjusted to the changes brought by the provisions. It noted the admission that the losses were due to its failure take measures to address the new circumstances brought by the provisions. It asserted that it is inaccurate that the petitioners are not provided a means to recoup their losses. It is not automatic that the change in tax treatment will result in loss of profits considering the law does not place a limit on the amount that they may charge for their items. It also failed to note that business decisions must consider laws in effect.

[38] *Lagcao vs. Judge Labra*, 483 Phil. 303, 312 (2004) [Per *J.* Corona, *En Banc*].

[39] *Republic v. Vda. de Castellvi,* 157 Phil. 329, 344-347 [Per *J.* Zaldivar, *En Banc*].

[40] *Reyes vs. National Housing Authority*, 443 Phil. 603, 610-611 (2003) [Per *J.* Puno, Third Division].

[41] CONST. (1987), Art. III, Sec. 9.

[42] 520 Phil. 457 (2006) [Per *J.* Chico-Nazario, First Division].

The power of eminent domain is the inherent right of the state (and of those entities to which the power has been lawfully delegated) to condemn private property to public use upon payment of just compensation. On the other hand, police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. Although both police power and the power of eminent domain have the general welfare for their object, and recent trends show a mingling of the two with the latter being used as an implement of the former, there are still traditional distinctions between the two.

Property condemned under police power is usually noxious or intended for a noxious purpose; hence, no compensation shall be paid. Likewise, *in the exercise of police power, property rights of private individuals are subjected to restraints and burdens in order to secure the general comfort, health, and prosperity of the state.* Thus, an ordinance prohibiting theaters from selling tickets in excess of their seating capacity (which would result in the diminution of profits of the theater-owners) was upheld valid as this would promote the comfort, convenience and safety of the customers. In *U.S. v. Toribio*, the court upheld the provisions of Act No. 1147, a statute regulating the slaughter of carabao for the purpose of conserving an adequate supply of draft animals, as a valid exercise of police power, notwithstanding the property rights impairment that the ordinance imposed on cattle owners.

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According to noted constitutionalist, Fr. Joaquin Bernas, SJ, in the exercise of its police power regulation, *the state restricts the use of private property, but none of the property interests in the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public. Use of the property by the owner was limited, but no aspect of the property is used by or for the public.* The deprivation of use can in fact be total and it will not constitute compensable taking if nobody else acquires use of the property or any interest therein.

If, however, in the regulation of the use of the property, somebody else acquires the use or interest thereof, such restriction constitutes compensable taking.[43] (Emphasis supplied, citations omitted)

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[43] *Id.* at 476-478.

The exercise of the power of eminent domain requires that there is property that is taken from the owner. In this case, there is no private property that may be the subject of a constitutional taking. The subject of the alleged "taking" is the establishments' *possible profits*. Possible profits cannot be acquired by the State through the exercise of the power of eminent domain. Possible profits are yet to be earned; hence, they are yet to be *owned*. They are intangible property for which establishments do not have a *vested right*.

A vested right is a fixed or established interest in a property that can no longer be doubted or questioned.[44] It is an "immediate fixed right of present or future enjoyment."[45] It is the opposite of an expectant or contingent right. [46]

In *Benguet Consolidated Mining Co. v. Pineda,*[47] this Court, citing Corpus Juris Secundum, elaborated:

> Rights are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. The right must be absolute, complete, and unconditional, independent of a contingency, and a mere expectancy of future benefit, or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested right. So, inchoate rights which have not been acted on are not vested. (16 C. J. S. 214-215.)[48]

Establishments do not have a vested right on possible profits. Their right is not yet absolute, complete, and unconditional.

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[44] *Benguet Consolidated Mining Co. v. Pineda*, 98 Phil. 711–739, 722 (1956) [Per *J.* J.B.L. Reyes, Second Division]; See also *Heirs of Zari v. Santos,* 137 Phil. 79 (1969) [Per *J.* Sanchez, *En Banc*].

[45] *Id.*; See also *Heirs of Zari v. Santos,* 137 Phil. 79 (1969) [Per *J.* Sanchez, *En Banc*].

[46] *Id.*; See also *Heirs of Zari v. Santos,* 137 Phil. 79 (1969) [Per *J.* Sanchez, *En Banc*].

[47] *Benguet Consolidated Mining Co. v. Pineda*, 98 Phil. 711-739 (1956) [Per *J.* J.B.L. Reyes, Second Division].

[48] *Id.* at 722.

Profits are earned only after the sale of their products, and after deducting costs. These sales may or may not occur. The existence of the profit or the loss is not certain. It cannot be assumed that the profits will be earned or that losses will be incurred. Assuming there are profits or losses, its amount is undeterminable.

Thus, for purposes of eminent domain, there is still no property that can be taken. There is no property owned. There is nothing to compensate.

The *ponencia* shares the same view. However, I maintain that to be consistent with this view***, the proof of losses (or the lack of profits) must be irrelevant. No matter the evidence, petitioners cannot be entitled to just compensation.***

Assuming there was a "taking," what was taken is not property contemplated by the exercise of eminent domain. Eminent domain pertains to physical property. In my opinion in *Manila Memorial Park*:[49]

> Most if not all jurisprudence on eminent domain involves real property, specifically that of land. Although Rule 67 of the Rules of Court, the rules governing expropriation proceedings, requires the complaint to "describe the real *or personal property* sought to be expropriated," this refers to tangible personal property for which the court will deliberate as to its value for purposes of just compensation.
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> In a sense, the forced nature of a sale under eminent domain is more justified for real property such as land. The common situation is that the government needs a specific plot, for the construction of a public highway for example, and the private owner cannot move his land to avoid being part of the project. On the other hand, most tangible personal or movable property need not be subject of a forced sale when the government can procure these items in a public bidding with several able and willing private sellers.
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> In *Republic of the Philippines v. Vda. de Castellvi*, this Court also laid down five (5) "circumstances [that] must be present in the 'taking' of property for purposes of eminent domain" as follows:

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[49] *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development,* 722 Phil. 538 (2013) [Per J. Del Castillo, *En Banc*].

> First, the expropriator must enter a private property[.]
>
> Second, the entrance into private property must be for more than a momentary period[.]
>
> Third, the entry into the property should be under warrant or color of legal authority[.]
>
> Fourth, the property must be devoted to a public use or otherwise informally appropriated or injuriously affected[.]
>
> Fifth, the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property[.]
>
> The requirement for "entry" or the element of "oust[ing] the owner" is not possible for intangible personal property such as profits.
>
> . . . . . .
>
> At most, profits can materialize in the form of cash, but even then, this is not the private property contemplated by the Constitution and whose value will be deliberated by courts for purposes of just compensation. We cannot compensate cash for cash.[50]

The right to profit is an intangible right, which cannot be appropriated for public use. In fact, it is a right and not property in itself. Moreover, the right was merely restricted, not taken. The establishment still is given a wide discretion on how to address the changes caused by the subject provisions, and how to ensure their profits. As shown in the above example, they may adjust their pricing, and improve on the costs of goods or their efficiency to manage potential outcomes. Profits may thus still be earned.

Losses and profits are still highly dependent on business judgments based on the economic environment. Whether or not losses are incurred cannot be attributable to the law alone. In fact, the law is one (1) of the givens that businesses must adjust to. It is not the law that must adjust for businesses. Businesses cannot claim compensation for a regulatory measure, which caused dips in their profit. Pricing and costs may be

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[50] *Id.* at 640-642.

adjusted accordingly, and it cannot be the law that will be limited by business decisions, which establishments refuse to change.

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Thus, in the exercise of its police power, the State may make variances in the pricing of goods to accommodate public policy, and to promote social justice. The State's determination of how establishments can recover the cost of the discounted prices is also a valid exercise of its power to tax. In this instance, the legislative chose to allow establishments a partial recovery of the granted discount through a tax deduction instead of a tax credit.

Both tax deductions and tax credits are valid options for the Congress, although the impacts of the two (2) are different.

As shown above, a tax deduction will naturally cause establishments to increase their prices to fully recover the cost of the discounts, and prevent losses. The burden of the cost is thus passed on to ordinary customers – to non-senior citizens with no disability.

However, the Philippine market is not homogenous. The impact of prices on ordinary customers from various sectors in society is different. It is possible that the poorer sectors in society are denied options because they can no longer afford the items that used to be available to them before the price increase caused by the granting of the discounts.

In the example above, a bottle of antibiotic syrup costs ₱100.00 prior to the grant of the discount. When the discount was imposed, Company XYZ adjusted its price by increasing it to ₱110.00. Under the subject provisions, a 78-year-old business tycoon earning billions every year is entitled to a 20% senior citizen discount. Thus, the business tycoon will be charged with only ₱88.00. On the other hand, an ordinary customer will have to allot a bigger portion of his wage to buy antibiotics. This 10-peso difference may be a bigger burden for the ordinary customer belonging to the poorer sectors of society. It may not be felt by some ordinary customers, but it may cause budgetary strains or may make it completely unaffordable for others.

Another example is the grant of free admissions in cinemas to senior citizens. Again, the cost of this discount is passed on to the ordinary consumer. While there may be those who do not feel the impact of the price increase, those who are living on small wages, who used to be able to watch films in the theatres, may no longer have enough in their budgets to pay for the difference in the price.

Necessarily, the public good is affected. The subject provisions seek the betterment of public welfare by improving the lives of its senior citizens and persons with disability. However, the practical effect of the Tax Deduction Scheme may be prejudicial to those ordinary customers who cannot keep up with the price increase. As a consequence, citizens may be denied certain goods and services because the burden falls on all ordinary customers, without considering their resources or their ability to pay. There may be thus an issue on equitability and progressiveness in terms of its effects.

A tax credit, on the other hand, allows the cost to be shouldered completely by the government. In such a case, establishments will not need to adjust its prices to recover the cost of the discount. Moreover, when it is the government who shoulders the cost through taxes paid by its people, the issue on equitability and progressiveness is better addressed. Taxes are constitutionally mandated to be equitable.[51] Congress is directed to evolve a progressive system of taxation.[52] Thus, when the government carries the burden of the discount through taxes collected in an equitable and progressive manner, the objective of improving the public welfare may still be achieved without much prejudice to the poorer sectors of society.

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[51] CONST. (1987), Art. VI, Sec. 28 provides:

Section 28. (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.n…

[52] CONST. (1987), Art. VI, Sec. 28 provides:

Section 28. (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

Nonetheless, this is a question of policy, and one which pertains to the wisdom of the legislative.

ACCORDINGLY, I vote to **DENY** the Petition, and to declare that Section 4(a) of Republic Act No. 9257 and Section 32 of Republic Act No. 9442 are **CONSTITUTIONAL**.

DISSENTING OPINION

CARPIO, *J.*:

The provisions in contention in the case before the Court are Section 4(a) of Republic Act No. 9257[1] (R.A. 9257) and Section 32 of Republic Act No. 9442[2] (R.A. 9442) which grant a 20% discount on the purchase of medicines, respectively, to senior citizens and persons with disability. Southern Luzon Drug Corporation (Southern Luzon Drug) assails the constitutionality of the provisions and the tax treatment of the 20% discount as tax deduction from gross income computed from the net cost of the goods sold or services rendered. Southern Luzon Drug alleges, among other things, that the 20% discount is an invalid exercise of the power of eminent domain insofar as it fails to provide just compensation to establishments that grant the discount.

The majority opinion affirms the constitutionality of the assailed provisions and reiterated the rulings in *Carlos Superdrug Corporation v. Department of Social Welfare and Development*[3] and *Manila Memorial Park, Inc. v. Secretary of the Department*

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[1] An Act Granting Additional Benefits and Privileges to Senior Citizens Amending for the Purpose Republic Act No. 7432, Otherwise Known as "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and For Other Purposes." It was further amended by R.A. No. 9994, the "Expanded Senior Citizens Act of 2010."

[2] An Act Amending Republic Act No. 7277, Otherwise Known as the "Magna Carta for Disabled Persons, and For Other Purposes."

[3] 553 Phil. 120 (2007).

of Social Welfare and Development[4] that the challenged provisions constitute a valid exercise of police power.

I maintain my dissent in the *Manila Memorial Park* case. I assert that *Carlos Superdrug Corporation* barely distinguished between police power and eminent domain. While it is true that police power is similar to the power of eminent domain because both have the general welfare of the people for their object, we need to clarify the concept of taking in eminent domain as against taking in police power to prevent any claim of police power when the power actually exercised is eminent domain. **When police power is exercised, there is no just compensation to the citizen who loses his private property. When eminent domain is exercised, there must be just compensation. Thus, the Court must distinguish and clarify taking in police power and taking in eminent domain. Government officials cannot just invoke police power when the act constitutes eminent domain.**

In *People v. Pomar*,[5] the Court acknowledged that "[b]y reason of the constant growth of public opinion in a developing civilization, the term 'police power' has never been, and we do not believe can be, clearly and definitely defined and circumscribed."[6] The Court stated that the "definition of the police power of the [S]tate must depend upon the particular law and the particular facts to which it is to be applied."[7] **However, it was considered even then that police power, when applied to taking of property without compensation, refers to property that is destroyed or placed outside the commerce of man.** The Court declared in *Pomar*:

> **It is believed and confidently asserted that no case can be found, in civilized society and well-organized governments, where individuals have been deprived of their property, under the police**

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[4] 722 Phil. 538 (2013).

[5] 46 Phil. 440 (1924).

[6] *Id*. at 445.

[7] *Id*.

power of the state, without compensation, *except* in cases where the property in question was used for the purpose of violating some law legally adopted, or constitutes a nuisance. Among such cases may be mentioned: Apparatus used in counterfeiting the money of the state; firearms illegally possessed; opium possessed in violation of law; apparatus used for gambling in violation of law; buildings and property used for the purpose of violating laws prohibiting the manufacture and sale of intoxicating liquors; and all cases in which the property itself has become a nuisance and dangerous and detrimental to the public health, morals and general welfare of the state. In all of such cases, and in many more which might be cited, the destruction of the property is permitted in the exercise of the police power of the state. But it must first be established that such property was used as the instrument for the violation of a valid existing law. (Mugler *vs*. Kansan, 123 U.S. 623; Slaughter-House Cases, 16 Wall. [U.S.] 36; Butchers' Union, etc., Co. *vs*. Crescent City, etc., Co., 111 U.S. 746; John Stuart Mill – "On Liberty," 28, 29)

Without further attempting to define what are the peculiar subjects or limits of the police power, it may safely be affirmed, that every law for the restraint and punishment of crimes, for the preservation of the public peace, health, and morals, must come within this category. But the state, when providing by legislation for the protection of the public health, the public morals, or the public safety, is subject to and is controlled by the paramount authority of the constitution of the state, and will not be permitted to violate rights secured or guaranteed by that instrument or interfere with the execution of the powers and rights guaranteed to the people under their law – the constitution. (Mugler *vs*. Kansas, 123 U.S. 623)[8] (Emphasis supplied)

In *City Government of Quezon City v. Hon. Judge Ericta*,[9] the Court quoted with approval the trial court's decision declaring null and void Section 9 of Ordinance No. 6118, S-64, of the Quezon City Council, thus:

We start the discussion with a restatement of certain basic principles. Occupying the forefront in the bill of rights is the provision which states that 'no person shall be deprived of life, liberty or property

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[8] *Id*. at 454-455.

[9] 207 Phil. 648 (1983).

without due process of law. (Art. III, Section 1 subparagraph 1, Constitution)

On the other hand, there are three inherent powers of government by which the state interferes with the property rights, namely – (1) police power, (2) eminent domain, [and] (3) taxation. These are said to exist independently of the Constitution as necessary attributes of sovereignty.

Police power is defined by Freund as 'the power of promoting the public welfare by restraining and regulating the use of liberty and property' (Quoted in Political Law by Tañada and Carreon, V-II, p. 50). It is usually exerted in order to merely regulate the use and enjoyment of property of the owner. ***If he is deprived of his property outright, it is not taken for public use but rather to destroy in order to promote the general welfare*****. In police power, the owner does not recover from the government for injury sustained in consequence thereof (12 C.J. 623).** It has been said that police power is the most essential of government powers, at times the most insistent, and always one of the least limitable of the powers of government (Ruby vs. Provincial Board, 39 Phil. 660; Ichong vs. Hernandez, L-7995, May 31, 1957). This power embraces the whole system of public regulation (U.S. vs. Linsuya Fan, 10 Phil. 104). The Supreme Court has said that police power is so far-reaching in scope that it has almost become impossible to limit its sweep. As it derives its existence from the very existence of the state itself, it does not need to be expressed or defined in its scope. Being coextensive with self-preservation and survival itself, it is the most positive and active of all governmental processes, the most essential, insistent and illimitable. Especially it is so under the modern democratic framework where the demands of society and nations have multiplied to almost unimaginable proportions. The field and scope of police power have become almost boundless, just as the fields of public interest and public welfare have become almost all embracing and have transcended human foresight. Since the Court cannot foresee the needs and demands of public interest and welfare, they cannot delimit beforehand the extent or scope of the police power by which and through which the state seeks to attain or achieve public interest and welfare. (Ichong vs. Hernandez, L-7995, May 31, 1957).

The police power being the most active power of the government and the due process clause being the broadest limitation on governmental power, the conflict between this power of government and the due process clause of the Constitution is oftentimes inevitable.

It will be seen from the foregoing authorities that police power is usually exercised in the form of mere regulation or restriction in the use of liberty or property for the promotion of the general welfare. It does not involve the taking or confiscation of property with the exception of a few cases where there is a necessity to confiscate private property in order to destroy it for the purpose of protecting the peace and order and of promoting the general welfare as for instance, the confiscation of an illegally possessed article, such as opium and firearms.[10] (Boldfacing and italicization supplied)

It is very clear that taking under the exercise of police power does not require any compensation because the property taken is either destroyed or placed outside the commerce of man.

On the other hand, the power of eminent domain has been described as –

> x x x 'the highest and most exact idea of property remaining in the government' that may be acquired for some public purpose through a method in the nature of a forced purchase by the State. It is a right to take or reassert dominion over property within the state for public use or to meet public exigency. It is said to be an essential part of governance even in its most primitive form and thus inseparable from sovereignty. The only direct constitutional qualification is that 'private property should not be taken for public use without just compensation.' This proscription is intended to provide a safeguard against possible abuse and so to protect as well the individual against whose property the power is sought to be enforced.[11]

In order to be valid, the taking of private property by the government under eminent domain has to be for public use and there must be just compensation.[12]

Fr. Joaquin G. Bernas, S.J., expounded:

Both police power and the power of eminent domain have the general welfare for their object. The former achieves its object by

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[10] *Id.* at 654-655.

[11] *Manosca v. CA*, 322 Phil. 442, 448 (1996).

[12] *Moday v. CA*, 335 Phil. 1057 (1997).

regulation while the latter by "taking". When property right is impaired by regulation, compensation is not required; whereas, when property is taken, the Constitution prescribes just compensation. **Hence, a sharp distinction must be made between regulation and taking.**

When title to property is transferred to the expropriating authority, there is a clear case of compensable taking. However, as will be seen, it is a settled rule that neither acquisition of title nor total destruction of value is essential to taking. It is in cases where title remains with the private owner that inquiry must be made whether the impairment of property right is merely regulation or already amounts to compensable taking.

An analysis of existing jurisprudence yields the rule that when a property interest is appropriated and applied to some public purpose, there is compensable taking. Where, however, a property interest is merely restricted because continued unrestricted use would be injurious to public welfare or where property is destroyed because continued existence of the property would be injurious to public interest, there is no compensable taking.[13] (Emphasis supplied)

Both Section 4(a) of R.A. 9257 and Section 32 of R.A. 9442 undeniably contemplate taking of property for public use. Private property is anything that is subject to private ownership. The property taken for public use applies not only to land but also to other proprietary property, including the mandatory discounts given to senior citizens and persons with disability which form part of the gross sales of the private establishments that are forced to give them. **The amount of mandatory discount is money that belongs to the private establishment. For sure, money or cash is private property because it is something of value that is subject to private ownership.** The taking of property under Section 4(a) of R.A. 9257 and Section 32 of R.A. 9442 is an exercise of the power of eminent domain and not an exercise of the police power of the State. **A clear and sharp distinction should be made because private property owners will be left at the mercy of government officials if**

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[13] *J*. Bernas, S.J., *THE 1987 CONSTITUTION OF THE PHILIPPINES*, *A Commentary* 379 (1996 ed.)

these officials are allowed to invoke police power when what is actually exercised is the power of eminent domain.

Section 9, Article III of the 1987 Constitution speaks of private property without any distinction. It does not state that there should be profit before the taking of property is subject to just compensation. The private property referred to for purposes of taking could be inherited, donated, purchased, mortgaged, or as in this case, part of the gross sales of private establishments. They are all private property and any taking should be attended by a corresponding payment of just compensation. The 20% discount granted to senior citizens and persons with disability belongs to private establishments, whether these establishments make a profit or suffer a loss.

Just compensation is **"the full and fair equivalent of the property taken from its owner by the expropriator**."[14] The Court explained:

> x x x. The measure is not the taker's gain, but the owner's loss. The word 'just' is used to qualify the meaning of the word 'compensation' and to convey thereby the idea that **the amount to be tendered for the property to be taken shall be real, substantial, full and ample**. x x x.[15] (Emphasis supplied)

The 32% of the discount that the private establishments could recover under the tax deduction scheme cannot be considered real, substantial, full, and ample compensation. In *Carlos Superdrug Corporation*, the Court conceded that "**[t]he permanent reduction in [private establishments'] total revenue is a forced subsidy corresponding to the taking of private property for public use or benefit**."[16] The Court ruled that "**[t]his constitutes compensable taking for which petitioners would ordinarily become entitled to a just compensation**."[17] Despite these pronouncements admitting there

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[14] *National Power Corporation v. Spouses Zabala*, 702 Phil. 491 (2013).

[15] *Id.* at 499-500.

[16] *Supra* note 3, at 129-130.

[17] *Id.* at 130.

was compensable taking, **the Court still proceeded to rule that "the State, in promoting the health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program."**

There may be valid instances when the State can impose burdens on private establishments that effectively subsidize a government program. However, the moment a constitutional threshold is crossed – when the burden constitutes a taking of private property for public use – then the burden becomes an exercise of eminent domain for which just compensation is required.

An example of a burden that can be validly imposed on private establishments is the requirement under Article 157 of the Labor Code that employers with a certain number of employees should maintain a clinic and employ a registered nurse, a physician, and a dentist, depending on the number of employees. Article 157 of the Labor Code provides:

> Art. 157. Emergency medical and dental services.– It shall be the duty of every employer to furnish his employees in any locality with free medical and dental attendance and facilities consisting of:
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> a. The services of a full-time registered nurse when the number of employees exceeds fifty (50) but not more than two hundred (200) except when the employer does not maintain hazardous workplaces, in which case, the services of a graduate first-aider shall be provided for the protection of workers, where no registered nurse is available. The Secretary of Labor and Employment shall provide by appropriate regulations, the services that shall be required where the number of employees does not exceed fifty (50) and shall determine by appropriate order, hazardous workplaces for purposes of this Article;
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> b. The services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic, when the number of employees exceeds two hundred (200) but not more than three hundred (300); and
>
> c. The services of a full-time physician, dentist and a full-time registered nurse as well as a dental clinic and an infirmary

> or emergency hospital with one bed capacity for every one hundred (100) employees when the number of employees exceeds three hundred (300). x x x.
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> x x x x x x x x x

Article 157 of the Labor Code is a burden imposed by the State on private employers to complement a government program of promoting a healthy workplace. The employer itself, however, benefits fully from this burden because the health of its workers while in the workplace is a legitimate concern of the private employer. Moreover, the cost of maintaining the clinic and staff is part of the **legislated wages** for which the private employer is **fully compensated** by the services of the employees. In the case of discounts to senior citizens and persons with disability, private establishments are compensated only in the equivalent amount of 32% of the mandatory discount. There are no services rendered by the senior citizens, or any other form of payment, that could make up for the 68% balance of the mandatory discount. Clearly, private establishments cannot recover the full amount of the discount they give and thus there is taking to the extent of the amount that cannot be recovered.

Another example of a burden that can be validly imposed on private establishments is the requirement under Section 19 in relation to Section 18 of the Social Security Law[18] and Section 7 of the Pag-IBIG Fund[19] for the employer to contribute a certain amount to fund the benefits of its employees. The amounts contributed by private employers form part of the **legislated wages** of employees. The private employers are deemed **fully compensated** for these amounts by the services rendered by the employees.

Here, the private establishments are only compensated about 32% of the 20% discount granted to senior citizens and persons

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[18] Republic Act No. 8282, otherwise known as the Social Security Act of 1997, which amended Republic Act No. 1161.

[19] Republic Act No. 9679, otherwise known as the Home Development Mutual Fund Law of 2009.

with disability. They shoulder 68% of the discount they are forced to give to senior citizens. The Court should correct this situation as it clearly violates Section 9, Article III of the Constitution which provides that "[p]rivate property shall not be taken for public use without just compensation." I reiterate that *Carlos Superdrug Corporation* should be abandoned by this Court and *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*,[20] holding that "the tax credit benefit granted to these establishments can be deemed as their just compensation for private property taken by the State for public use" should be reaffirmed.

Carlos Superdrug Corporation admitted that the permanent reduction in the total revenues of private establishments is a "**compensable taking for which petitioners would ordinarily become entitled to a just compensation**."[21] However, *Carlos Superdrug Corporation* considered that there was sufficient basis for taking without compensation by invoking the exercise of police power of the State. In doing so, the Court failed to consider that a **permanent** taking of property for public use is an exercise of eminent domain for which the government must pay compensation. Eminent domain is distinct from police power and its exercise is subject to certain conditions, that is, the taking of property for public use and payment of just compensation.

It is incorrect to say that private establishments only suffer a minimal loss when they give a 20% discount to senior citizens and persons with disability. Under R.A. 9257, the 20% discount applies to "**all establishments** relative to the utilization of services in hotels and similar lodging establishments, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;"[22] "admission fees charged by theaters, cinema houses and concert halls, circuses, carnivals, and other similar

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[20] 496 Phil. 307 (2005).

[21] *Supra* note 3, at 130.

[22] Section 4(a).

places of culture, leisure and amusement for the exclusive use or enjoyment of senior citizens;"[23] "medical and dental services, and diagnostic and laboratory fees provided under Section 4(e) including professional fees of attending doctors in all private hospitals and medical facilities, in accordance with the rules and regulations to be issued by the Department of Health, in coordination with the Philippine Health Insurance Corporation;"[24] "fare for domestic air and sea travel for the exclusive use or enjoyment of senior citizens;"[25] and "public railways, skyways and bus fare for the exclusive use and enjoyment of senior citizens."[26]

Likewise, the 20% discount under R.A. 9442 applies to "**all establishments** relative to the utilization of all services in hotels and similar lodging establishments; restaurants and recreation centers for the exclusive use or enjoyment of persons with disability;"[27] admission fees charged by theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement for the exclusive use or enjoyment of persons with disability;"[28] "purchase of medicines in all drugstores for the exclusive use or enjoyment of persons with disability;"[29] "medical and dental services including diagnostic and laboratory fees such as, but not limited to, x-rays, computerized tomography scans and blood tests in all government facilities, in accordance with the rules and regulations to be issued by the Department of Health (DOH), in coordination with the Philippine Health Insurance Corporation (PHILHEALTH);"[30] "medical and dental services including

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[23] Section 4(b).

[24] Section 4(f).

[25] Section 4(g).

[26] Section 4(h).

[27] Section 32(a),

[28] Section 32(b).

[29] Section 32(c).

[30] Section 32(d).

diagnostic and laboratory fees, and professional fees of attending doctors in all private hospitals and medical facilities, in accordance with the rules and regulations issued by the DOH, in coordination with the PHILHEALTH;[31] "fare for domestic air and sea travel for the exclusive use or enjoyment of persons with disability,"[32] and "public railways, skyways and bus fare for the exclusive use or enjoyment of persons with disability."[33] **The 20%, discount cannot be considered minimal because not all private establishments make a 20%, margin of profit. Besides, on its face alone, a 20% mandatory discount based on the gross selling price is huge. The 20% mandatory discount is more than the 12% Value Added Tax, itself not an insignificant amount.**

According to the majority opinion, R.A. Nos. 9257 and 9442 are akin to regulatory laws which are within the ambit of police power, such as the minimum wage law, zoning ordinances, price control laws, laws regulating the operation of motels or hotels, law limiting the working hours to eight, and similar laws falling under the same category.[34] The majority opinion states that private establishments cannot protest that the imposition of the minimum wage law is confiscatory, or that the imposition of the price control law deprives the affected establishments of their supposed gains.[35]

There are instances when the State can regulate the profits of establishments but only in specific cases. For instance, the profits of public utilities can be regulated because they operate under franchises granted by the State. Only those who are granted franchises by the State can operate public utilities, and these franchisees have agreed to limit their profits as condition for the grant of the franchises. The profits of industries imbued

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[31] Section 32(e).

[32] Section 32(f).

[33] Section 32(g).

[34] Decision, p. 24.

[35] *Id*.

with public interest, but which do not enjoy franchises from the State, can also be regulated but only **temporarily** during emergencies like calamities. There has to be an emergency to trigger price control on businesses and only for the duration of the emergency. The profits of private establishments which are non-franchisees cannot be regulated **permanently**, and there is no such law regulating their profits permanently. The State can take over private property without compensation in times of war or other national emergency under Section 23(2), Article VI of the Constitution **but only for a limited period** and subject to such restrictions as Congress may provide. Under its police power, the State may also **temporarily** limit or suspend business activities. One example is the two-day liquor ban during elections under Article 261 of the Omnibus Election Code but this, again, is only **for a limited period**. This is a valid exercise of police power of the State.

However, any form of **permanent** taking of private property is an exercise of eminent domain that requires the State to pay just compensation. **The police power to regulate business cannot negate another provision of the Constitution like the eminent domain clause, which requires just compensation to be paid for the taking of private property for public use. The State has the power to regulate the conduct of the business of private establishments as long as the regulation is reasonable, but when the regulation amounts to permanent taking of private property for public use, there must be just compensation because the regulation now reaches the level of eminent domain.**

The majority opinion states that the laws do not place a cap on the amount of markup that private establishments may impose on their prices.[36] Hence, according to the majority opinion, the laws *per se* do not cause the losses but bad business judgment on the part of the establishments.[37] The majority opinion adds that a level adjustment in the pricing of items is a reasonable

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[36] *Id*. at 19.

[37] *Id*. at 20.

business measure and could even make establishments earn more.[38] However, such an economic justification is self-defeating, for more consumers will suffer from the price increase than will benefit from the 20% discount. Even then, such ability to increase prices cannot legally validate a violation of the eminent domain clause.

I maintain that while the 20% discount granted to senior citizens an persons with disability is not *per se* unreasonable, the tax treatment of the 20% discount as tax deduction from gross income computed from the net cost of the goods sold or services rendered is oppressive and confiscatory. Section 4(a) of R.A. 9257, providing that private establishments may claim the 20% discount to senior citizens as tax deduction, is patently unconstitutional. As such, Section 4 of R.A. 7432, the old law prior to the amendment by R.A. No. 9257, which allows the 20% discount as tax credit, should be automatically reinstated. I reiterate that where amendments to a statute are declared unconstitutional, the original statute as it existed before the amendment remains in force.[39] An amendatory law, if declared null and void, in legal contemplation does not exist.[40] The private establishments should therefore be allowed to claim the 20% discount granted to senior citizens as tax credit. Likewise, Section 32 of R.A. 9442, providing that the establishments may claim the discounts given as tax deductions based on the net cost of the goods sold or services rendered, is also, unconstitutional. Instead, establishments should be allowed to claim the 20% discount given to persons with disability as tax credit.

ACCORDINGLY, I vote to **GRANT** the petition.

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[38] *Id.* at 21.

[39] See *Government of the Philippine Islands v. Agoncillo*, 50 Phil. 348 (1927), citing *Eberle v. Michigan*, 232 U.S. 700 [1914], *People v. Mensching*, 187 N.Y.S., 8, 10 L.R.A., 625 [1907].

[40] See *Coca-Cola Bottlers Phils., Inc. v. City of Manila*, 526 Phil. 249 (2006).

FIRST DIVISION

[G.R. No. 200204. April 25, 2017]

SPOUSES ELVIRA ALCANTARA AND EDWIN ALCANTARA, *petitioners, vs.* **SPOUSES FLORANTE BELEN AND ZENAIDA ANANIAS, THE PROVINCIAL ENVIRONMENT AND NATURAL RESOURCES OFFICER, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, STA. CRUZ, LAGUNA, and THE CITY ASSESSOR OF SAN PABLO CITY,** *respondents.*

SYLLABUS

CIVIL LAW; LAND TITLES; CERTIFICATE OF TITLE PREVAILS AS AN ABSOLUTE AND INDEFEASIBLE EVIDENCE OF OWNERSHIP OF THE PROPERTY AGAINST TAX DECLARATIONS.— Based on established jurisprudence, we rule that the certificate of title of petitioners is an absolute and indefeasible evidence of their ownership of the property. The irrelevant Tax Declarations of Spouses Belen cannot defeat TCT No. T-36252 of Spouses Alcantara, as it is binding and conclusive upon the whole world. *Cureg v. Intermediate Appellate Court* explains: [A]s against an array of proofs consisting of tax declarations and/or tax receipts which are not conclusive evidence of ownership nor proof of the area covered therein, an original certificate of title indicates true and legal ownership by the registered owners over the disputed premises. x x x In *Pioneer Insurance and Surety Corp. v. Heirs of Coronado,* we discussed the instant legal issue as follows: Indubitably, a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. The real purpose of the Torrens System of land registration is to quiet title to land and put stop forever to any question as to the legality of the title.

APPEARANCES OF COUNSEL

Eustacia V. Frando for petitioners.
Antonio Lacsam for respondents.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Rule 45 Petition[1] assailing the Court of Appeals (CA) Decision and Resolution,[2] which reversed the Decision[3] of the Regional Trial Court (RTC). The RTC granted the entreaty of petitioner spouses Elvira and Edwin Alcantara for the quieting of title and reconveyance of possession of Lot No. 16932 occupied by respondent spouses Florante Belen and Zenaida Ananias.

FACTS OF THE CASE

In 2005, Spouses Alcantara filed before the RTC a Complaint[4] against Spouses Belen for the quieting of title, reconveyance of possession, and accounting of harvest with damages. Petitioners argued that their neighbors, respondents herein, had extended the latter's possession up to the land titled to Spouses Alcantara, and usurped the harvests therefrom.

Spouses Alcantara claimed that they were the registered owners of Lot No. 16932 – a 3,887-square-meter parcel of land planted with trees and covered by Transfer Certificate of Title (TCT) No. T-36252.[5] Elvira Alcantara traced her ownership of the property to her inheritance from her mother, Asuncion Alimon. By virtue of an Affidavit of Self-Adjudication dated

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[1] *Rollo*, pp. 8-21; Petition for Review By *Certiorari* filed on 9 March 2012.

[2] *Id.* at 23-30, 32-33; the CA Decision dated 26 August 2011 and Resolution dated 12 January 2012 in CA-G.R. CV No. 94638 were penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Ramon M. Bato, Jr. and Florito S. Macalino concurring.

[3] Records, pp. 191-198; the Decision dated 9 February 2009 in Civil Case No. SP-6207 was penned by Presiding Judge Agripino G. Morga, RTC, San Pablo City, Branch 32.

[4] *Id*. at 3-8; Complaint filed on 22 June 2005.

[5] *Id*. at 9 (with back page).

24 March 1993,[6] Free Patent No. (IV-5)-3535 dated 28 August 1974 and Original Certificate of Title (OCT) No. P-512[7] issued on 17 January 1975 were cancelled, and, in lieu thereof, TCT No. T-36252 was issued in the name of Elvira Alcantara.

In addition to the certificate of title, Spouses Alcantara submitted as evidence the Tax Declarations of the property registered to them and their predecessors-in-interest, receipts[8] of their payments for real property taxes, and a Sketch/Special Plan[9] of Lot No. 16932 prepared by Geodetic Engineer Augusto C. Rivera.

On the strength of a sales agreement called *Kasulatan ng Bilihang Tuluyan ng Lupa,*[10] respondents countered Spouses Alcantara's claims over the property. Spouses Belen alleged that they bought the property from its prior owners. Even though respondents did not have any certificate of title over the property, they supported their claim of ownership with various Tax Declarations under the name of their predecessors-in-interest. Spouses Belen also submitted a Sketch/Special Plan[11] of Lot No. 16932 prepared by Geodetic Engineer Hector C. Santos.

Furthermore, Spouses Belen attacked the OCT of Asuncion Alimon. They claimed that fraud attended the issuance of a Free Patent to her, considering that the Belens had occupied the property ever since. According to respondents, they already protested her title still pending before the Community Environment and Natural Resources Office (CENRO) of the Department of Environment and Natural Resources (DENR).[12]

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[6] Records (Folder of Exhibits), p. 23.

[7] *Id.* at 22-23 (with back page).

[8] *Id.* at 24-30.

[9] *Id.* at 34.

[10] *Id.* at 40-41.

[11] *Id.* at 39.

[12] *Id.* at 36-38.

In its Decision dated 9 February 2009, the RTC gave more weight to the certificate of title and Tax Declarations presented by petitioners, declaring them the absolute owners of Lot No. 16932. The trial court further dislodged the use of the Tax Declarations registered under the names of Spouses Belen and their predecessors-in-interest, because these documents did not have the technical description of the land and its boundaries; and in contrast, the TCT of Spouses Alcantara defined the subject property by metes and bounds, with a technical description approved by the Land Management Bureau.

The RTC went on to conclude that respondents were claiming Lot No. 16931, a property different from Lot No. 16932, *viz:*[13]

> There is clear evidence that what the plaintiffs are claiming based on their title is Lot No. 16932, and what the defendants are claiming to have bought from their predecessors-in-interest, is a different lot with different boundaries and technical descriptions to that of Lot No. 16932. The land covered by the plaintiff's title has an area of 3,887 square meters only and its boundaries consist of the following "NW-by Lot 16916; NE & SE-by Lot 16934; S- by Lot 16930; and SW- by Lot 16931." On the other hand, the lot bought by the defendants has 4,368 square meters with the following boundaries: "N-Paulino Velasco; E-by Felix Velasco; South-Cipriano Dayo and Crisanto Delos Reyes; and W-by Casiano Meraña." The difference is made more manifest by the survey plan (Exhibit "E"; Records, p. 213) prepared by Geodetic Engineer Augusto C. Rivera which is part of the Cadastral Lot survey for San Pablo City, showing that the defendants' property which they bought is **Lot No. 16931, not Lot 16932**, covered by the title of the plaintiffs. x x x
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> x x x x x x x x x
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> The evidence of the defendants consisting of tax declarations (Exhibit "4"; Records, p. 278) show that what is tax declared in their names is **Lot No. 16931, not Lot No. 16932**.
>
> x x x. The evidence also shows that while the lot purchased by the defendants from their predecessors-in-interest has been tax declared since 1948, Lot No. 16932 covered by plaintiff's title was only tax declared in 1983 in the name of the plaintiff's mother Asuncion Alimon.

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[13] Records, pp. 196-197.

This simply goes to show that **if indeed what was purchased by the defendants is Lot No. 16932, the said lot should have been covered by the tax declarations issued to their predecessors-in-interest as early as 1948**. Yet it clearly appears that Lot 16932 was declared only in 1983. (Emphasis supplied)

Spouses Belen successfully appealed before the CA. The appellate court found that respondents had presented their claims of ownership over Lot No. 16932, and not Lot No. 16931.

The CA then declared that Asuncion Alimon was not a possessor or cultivator of the subject land, a fact that voided the Free Patent issued to her, as well as the resulting OCT and TCT. The appellate court additionally held that Elvira Alcantara was not a legal heir of Asuncion Alimon.

Since petitioners failed to show their legal entitlement to Lot No. 16932, the CA went on to declare respondents the owners of that property. Moreover, it ordered the cancellation of OCT No. P-512 and TCT No. T-36252.

Spouses Alcantara moved for reconsideration,[14] but to no avail. Before this Court, petitioners bewail the conclusions of the CA that respondents own Lot No. 16932 and that petitioners' title to the realty is void. Petitioners assert that the Tax Declarations and the *Kasulatan ng Bilihang Tuluyan ng Lupa* submitted by Spouses Belen pertain to Lot No. 16931. Spouses Alcantara further posit that the Free Patent granted to Asuncion Alimon can only be litigated in reversion proceedings. Moreover, they allege that respondents cannot properly assail, for the first time on appeal, the right of Elvira Alcantara to succeed Asuncion Alimon.

In their Comment,[15] respondents do not deny that Lot No. 16932 is different from Lot No. 16931.[16] They nevertheless

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[14] *Rollo*, pp. 63-72; Motion for Reconsideration filed on 23 September 2011.

[15] *Id*. at 93-95; Comment on the Petition for Review filed on 22 June 2012.

[16] *Id*. at 93. Respondents specifically wrote in their Comment: "Whether or not Lot 16932 is different from Lot 16931 is obvious for a person can own a number of lots; x x x."

assert ownership over Lot No. 16932, alleging that their exhibits – the Tax Declarations and the *Kasulatan ng Bilihang Tuluyan ng Lupa* – showed their superior right over the realty. They also maintain that the CA correctly cancelled the Free Patent of Asuncion Alimon and declared Elvira Alcantara a mere adoptee of Alimon.

ISSUE OF THE CASE

The nature of the action filed by petitioners below is for the quieting of title and the recovery of possession against the occupants of the property, Spouses Belen. To quiet title, Article 477 of the Civil Code requires that the claimants must have a legal or an equitable title to or interest in the real property that is the subject matter of the action.[17]

As for the recovery of possession, Spouses Alcantara pray for the possession and use of the subject lot and the right to harvest from it, which are the reliefs granted in an *accion reivindicatoria*.[18] In this judicial remedy, a party claims ownership over a parcel of land and seeks recovery of its full possession.[19]

Therefore, in these proceedings, the Court is tasked to review whether the CA committed errors of law in concluding the legal issue of ownership in favor of respondents on the basis of their Tax Declarations and the *Kasulatan ng Bilihang Tuluyan ng Lupa* notwithstanding the TCT of Spouses Alcantara. In other words, we are presented with the question of whether a certificate of title may be sufficiently defeated by tax declarations and

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[17] *Heirs of Castillejos v. La Tondeña Incorporada,* G.R. No. 190158, 20 July 2016. "For the action to prosper, two requisites must concur, *viz.*: (1) the plaintiff or complainant must have a legal or an equitable title to or interest in the real property which is the subject matter of the action; and (2) the deed, claim, encumbrance or proceeding that is being alleged as a cloud on plaintiff's title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy."

[18] *Capacete v. Baroro,* 453 Phil. 392 (2003).

[19] *Id*.

deeds of sale. Before us is thus a question of law as elucidated in *Gaerlan v. Republic:*[20]

> The distinction between a "question of law" and a "question of fact" is settled. x x x. In *Republic v. Vega*, the Court held that when petitioner asks for a review of the decision made by a lower court based on the evidence presented, without delving into their probative value but simply on their sufficiency to support the legal conclusions made, then a question of law is raised.
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> In the present case, there seems to be no dispute as to the facts, and the question presented before us calls for a review of the CA's conclusion that the documents and evidence presented by petitioner are insufficient to support her application for registration of title. Hence, the petition is properly filed.

RULING OF THE COURT

The appellate court held that the *Kasulatan ng Bilihang Tuluyan ng Lupa* and the Tax Declaration submitted by respondents pertained to the lot in litigation and reasoned that the "description of the property as shown by the statement of the boundaries in the tax declaration bespeaks of the lot in litigation as described in the Deed of Sale submitted in evidence by the appellants."[21] Based on these documents, the CA adjudged Spouses Belen the lawful owners of Lot No. 16932.

However, in the first place, these exhibits do not involve Lot No. 16932. As correctly assessed by the RTC, the parcel of land described in the *Kasulatan ng Bilihang Tuluyan ng Lupa* does not correspond to the description of Lot No. 16932 as contained in the realty's certificate of title claimed by petitioners. TCT No. T-36252 reads:[22]

> Beginning at a point marked "1" of lot 16932, Cad-438-D, being N. 46-17 W., 5367.86 m. from BLLM No. 1, Cad-438-D, San Pablo City Cad.; thence N. 65-45 E., 63.74 m. to point 2 S. 20-56 E., 68.88

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[20] 729 Phil. 418, 432 (2014).

[21] *Id.* at 29.

[22] Records (Folder of Exhibits), p. 2.

m. to point 3; S. 76-30 W. 28.67 m. to point 4; S. 76-47 W., 31.59 m. to point 5; N. 24-50 W., 57.36 m. to point 1; point of beginning. Containing an area of THREE THOUSAND EIGHT HUNDRED EIGHTY SEVEN (3,887) SQUARE METERS. x x x.

On the other hand, the *Kasulatan ng Bilihang Tuluyan ng Lupa* pertains to the following:[23]

Isang (1) lagay na lupang niyugan na natatayo sa Nayon ng San Marcos, Lungsod ng San Pablo. Ang kabalantay sa HILAGA – ay Paulino Velasco; sa SILANGAN – ay, Felix Velasco; sa TIMOG – ay Cipriano Dayo at Crisanto Meraña Reyes; at sa KANLURAN - ay Casiano Meraña; may lawak na 4,368 metros parisukat, humigit-kumulang, x x x ayon sa Boja Declaratoria Blg. 23949. x x x.

A cursory reading of the above excerpts clearly shows that the lot claimed by petitioners is not the property conveyed in the deed of sale presented by respondents. Aside from their difference in size, the two properties have distinctive boundaries. Therefore, on the face of the documents, the CA incorrectly ruled that these pertained to Lot No. 16932.

The ruling of the CA that respondents own Lot No. 16932 based on their Tax Declarations is likewise erroneous. Tracing the history of the Tax Declarations registered under the names of respondents to those of their predecessors-in-interest, we find that none of these refers to Lot No. 16932.

The oldest Tax Declaration exhibited by respondents is No. 3902[24] issued to Martin Belen in 1948. It covers a 4,368-square-meter lot with the same boundaries as those indicated in the *Kasulatan ng Bilihang Tuluyan ng Lupa*. This document was followed by the following Tax Declarations covering the same property and registered to respondents' predecessors-in-interest: (1) No. 12041;[25] (2) No. 34046;[26] (3) No. 20303;[27]

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[23] *Id*. at 40.

[24] *Id*. at 49.

[25] *Id*. at 50.

[26] *Id*. at 51 (with back page).

[27] *Id*. at 46.

(4) No. 51502;[28] (5) No. 23439[29] (which is the subject of the *Kasulatang Bilihang Tuluyan ng Lupa*); (6) No. 63-914;[30] (7) ARP No. 91-06422;[31] and (8) the present Tax Declaration, ARP No. 94-059-018.[32]

The last three Tax Declarations were already registered to Spouses Belen. Indicated on the dorsal portion of these documents are the following: the parcel of land, area, and boundaries covered by the Tax Declaration. Through all of these details, we read that the exhibits presented by respondents refer to Lot No. 16931, having an area of around 4,368 square meters[33] and delineated by metes and bounds different from those described in TCT No. T-36252. Hence, the RTC accurately ruled that the evidence of respondents "consisting of tax declarations x x x shows that what is tax declared in their names is Lot No. 16931, not Lot No. 16932."[34]

Even assuming that the Tax Declarations of respondents pertain to the subject property, this Court finds that the CA incorrectly applied the law on land titles. The appellate court should not have set aside the RTC's appreciation of the certificate of title registered to Spouses Alcantara just because Spouses Belen presented their Tax Declarations.

Based on established jurisprudence,[35] we rule that the certificate of title of petitioners is an absolute and indefeasible

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[28] *Id*. at 45 (with back page).

[29] *Id*. at 53.

[30] *Id*. at 55.

[31] *Id*. at 8 (with back page).

[32] *Id*. at 7 (with back page).

[33] The Tax Declarations indicate various sizes (in square meters) of the lot: 4,368, 4,428.56, and 4,428.

[34] *Rollo,* p. 80.

[35] *Spouses Ocampo v. Heirs of Dionisio*, 744 Phil. 716 (2014); *Pioneer Insurance and Surety Corp. v. Heirs of Coronado*, 612 Phil. 573 (2009); *Vda. de Villanueva v. Court of Appeals*, 403 Phil. 721 (2001).

evidence of their ownership of the property. The irrelevant Tax Declarations of Spouses Belen cannot defeat TCT No. T-36252 of Spouses Alcantara, as it is binding and conclusive upon the whole world.[36] *Cureg v. Intermediate Appellate Court*[37] explains:

> [A]s against an array of proofs consisting of tax declarations and/or tax receipts which are not conclusive evidence of ownership nor proof of the area covered therein, an original certificate of title indicates true and legal ownership by the registered owners over the disputed premises. Petitioners' OCT No. P-19093 should be accorded greater weight as against the tax declarations x x x offered by private respondents in support of their claim x x x.

Aside from presenting a certificate of title to the claimed property, petitioners submit as evidence the Tax Declarations registered to them and to their predecessors-in-interest. The earliest Tax Declaration on record is No. 58760[38] registered to Asuncion Alimon in 1983. Subsequent to that issuance are the following Tax Declarations: (1) No. 59-992;[39] (2) ARP No. 91-48014;[40] (3) ARP No. 94-059-0019;[41] and (4) the present Tax Declaration, 99-059-00795.[42] The back pages of all these Tax Declarations exhibited by petitioners uniformly refer to Lot No. 16932, having an area of 3,887 square meters with boundaries as described in TCT No. T-36252.

These Tax Declarations,[43] together with the certificate of title[44] presented by petitioners, support their claims over Lot No. 16932.

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[36] *Castillo v. Escutin*, 600 Phil. 303-336 *(2009); Heirs of Vencilao, Sr. v. Court of Appeals*, 351 Phil. 815 (1998).

[37] 258 Phil. 104, 110 (1989), citing *Ferrer-Lopez v. Court of Appeals,* 234 Phil. 388 (1987).

[38] Records (Folder of Exhibits), p. 48 (with back page).

[39] *Id*. at 20 (with back page).

[40] *Id*. at 19 (with back page).

[41] *Id*. at 18 (with back page).

[42] *Id*. at 17 (with back page).

[43] *Valdez-Tallorin v. Heirs of Tarona,* 620 Phil. 268 (2009).

[44] *Spouses Pascual v. Spouses Coronel,* 554 Phil. 351 (2007).

Therefore, the CA incorrectly disposed of the property in favor of respondents, considering the indefeasibility of the Torrens title submitted as evidence by petitioners. In *Pioneer Insurance and Surety Corp. v. Heirs of Coronado,*[45] we discussed the instant legal issue as follows:

> Indubitably, a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. The real purpose of the Torrens System of land registration is to quiet title to land and put stop forever to any question as to the legality of the title.

In the same assailed ruling, the CA went beyond the contents of the TCT and concluded that its issuance was a nullity. It went on to declare the Free Patent issued to Asuncion Alimon void and ruled that Elvira Alcantara was not a lawful heir of Asuncion Alimon.

In declaring the nullity of the Free Patent, the CA held thus:[46]

> A Free Patent cannot be issued to Alimon because it cannot be issued to a person who is not a possessor or cultivator of the land or is not paying taxes that will justify segregation from the public land of the land applied for. Alimon intentionally applied for a Free Patent absent the foregoing requirements.

Noticeably, the CA failed to cite any specific exhibit on record showing that Asuncion Alimon did not possess the land when she applied for the patent. In effect, it jumped to conclusions without any sufficient basis for its premise. This form of adjudication is flawed, as no less than the Constitution mandates that a court decision must express clearly and distinctly the facts and the law on which it is based.[47]

Anent the legal status of Elvira Alcantara, the CA stated:[48]

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[45] 612 Phil. 573, 581 (2009).

[46] *Rollo,* p. 28.

[47] CONSTITUTION, Article VIII, Section 14.

[48] *Rollo,* p. 28.

On the other hand, appellee Elvira Alcantara is just a "Palake" of Alimon who had transferred the land to themselves. Appellee is not a legal heir of Alimon. Margarito Belarmino, who testified for the appellees, admitted in court during cross-examination that appellee Elvira Alcantara is just a "Palake" or adopted.

In *Bagayas v. Bagayas,*[49] this Court reiterated that courts must refrain from making a declaration of heirship in an ordinary civil action because "matters relating to the rights of filiation and heirship must be ventilated in a special proceeding instituted precisely for the purpose of determining such rights."[50] Straightforwardly, the CA is precluded from determining the issue of filiation in a proceeding for the quieting of title and *accion reivindicatoria.*

While there are exceptions to this rule, none obtains in this case.[51] There is no allegation on record that, as regards the parties, a special proceeding was instituted but was finally closed and terminated. In the proceedings before the RTC, none of the parties exhaustively presented evidence regarding the issue of filiation, save for the above-cited testimony of Margarito Belarmino. Neither did the trial court make any pronouncement as regards that issue. Given, therefore, the dearth of evidence

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[49] 718 Phil. 91 (2013).

[50] *Id.* at 103.

[51] *Heirs of Ypon v. Ricaforte*, 713 Phil. 570, 576-577 (2013). This Court ruled that:

> By way of exception, the need to institute a separate special proceeding for the determination of heirship may be dispensed with for the sake of practicality, as when the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship, and the RTC had consequently rendered judgment thereon, or when a special proceeding had been instituted but had been finally closed and terminated, and hence, cannot be re-opened.
>
> In this case, none of the foregoing exceptions, or those of similar nature, appear to exist. Hence, there lies the need to institute the proper special proceeding in order to determine the heirship of the parties involved, ultimately resulting to the dismissal of Civil Case No. T-2246.

and discussion on filiation *a quo*, the CA should not have adjudicated the status of Elvira Alcantara as a legitimate daughter or an adopted child in succeeding to the rights of Asuncion Alimon.

All told, we find that the CA committed an error of law in giving precedence to the Tax Declarations and irrelevant deed of sale of Spouses Belen over a Torrens title to Lot No. 16932 registered to Spouses Alcantara. The appellate court likewise erred in nullifying the title of petitioners over the realty, because it did not provide any basis for invalidating the Free Patent of Asuncion Alimon. Finally, we find fault on the part of the CA in improperly declaring Elvira Alcantara an adopted child outside the confines of a special proceeding.

WHEREFORE, the Petition for Review on Certiorari filed by Spouses Elvira Alcantara and Edwin Alcantara is **GRANTED**. The Court of Appeals Decision dated 26 August 2011 and Resolution dated 12 January 2012 in CA-G.R. CV No. 94638 are **REVERSED** and **SET ASIDE**. The Regional Trial Court Decision dated 9 February 2009 in Civil Case No. SP-6207 is hereby **REINSTATED.**

SO ORDERED.

Leonardo-de Castro, del Castillo, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 202189. April 25, 2017]

RODANTE F. GUYAMIN, LUCINIA F. GUYAMIN, and EILEEN G. GATARIN, *petitioners, vs.* **JACINTO G. FLORES and MAXIMO G. FLORES, represented by RAMON G. FLORES,** *respondents.*

SYLLABUS

REMEDIAL LAW; SUBSTANTIVE RIGHTS PREVAIL AS AGAINST MERE TECHNICALITIES.— The Court notes that petitioners raise purely procedural questions and nothing more. In other words, petitioners aim to win their case not on the merit, but on *pure technicality*. But in order for this Court to even consider their arguments, petitioners should have at least shown that they have a substantial defense to respondents' claim. There must be a semblance of validity in their resistance to respondents' Complaint. However, there appears to be none at all. x x x Indeed, they failed to realize that this Court is not composed of machines that will mindlessly and mechanically solve a problem at the touch of a button; it will not be forced into motion on petitioners' turn of a key. They must be reminded that – **The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice, but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion.** That is precisely why courts, in rendering justice, have always been, as they in fact ought to be, conscientiously guided by the norm that on the balance, **technicalities take a backseat to substantive rights, and not the other way around**. As applied to the instant case, in the language of then Chief Justice Querube Makalintal, **technicalities 'should give way to the realities of the situation.'**

APPEARANCES OF COUNSEL

Lysander L. Fetizanan for petitioners.
Sikat V. Agbunag for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside the May 23, 2012 Decision[2] of the Court of Appeals (CA) in

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[1] *Rollo*, pp. 8-32.

[2] *Id.* at 34-42; penned by Associate Justice Leoncia R. Dimagiba and concurred in by Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison.

CA-G.R. CV. No. 92924 which affirmed the October 21, 2008 Decision[3] of the Regional Trial Court (RTC) of Trece Martires City, Branch 23 in Civil Case No. TMCV-0040-06.

Factual Antecedents

In 2006, respondents Jacinto G. Flores and Maximo G. Flores, represented by their brother and attorney-in-fact Ramon G. Flores, filed a Complaint[4] for Recovery of Possession against petitioners Rodante F. Guyamin (Rodante), Lucinia F. Guyamin (Lucinia), and Eileen G. Gatarin (Eileen). The case was docketed as Civil Case No. TMCV-0040-06 and assigned to Branch 23 of the RTC of Trece Martires City.

Respondents alleged in their Complaint that they are the registered owners of a 984-square meter lot in *Barangay* Santiago, General Trias, Cavite covered by Transfer Certificate of Title No. T-308589 (the subject property);[5] that petitioners are their relatives who for many years have been occupying the subject property by mere tolerance of respondents' predecessors and parents, the original owners of the same; that petitioners have been "reminded x x x to vacate the premises"[6] because respondents have decided to sell the property; that petitioners failed to vacate; that respondents made several attempts to settle the matter through conciliation before the *Punong Barangay* but the same proved futile; that the *Punong Barangay* was constrained to issue a Certification To File Action;[7] that respondents were thus compelled to file the Complaint and incur legal expenses, for which they pray that petitioners be ordered to vacate the subject property and pay ₱20,000.00 attorney's fees, ₱5,000.00 litigation expenses, and costs.

On September 25, 2006, summons and a copy of the Complaint were served upon petitioners through Eileen, who nonetheless

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[3] *Id*. at 69-71; penned by Executive Judge Aurelio G. Icasiano, Jr.

[4] *Id*. at 44-46.

[5] *Id*. at 49-50.

[6] *Id*. at 45.

[7] *Id*. at 73.

refused to sign and acknowledge receipt thereof. This fact was noted in the court process server's Return of Summons dated September 26, 2006.[8]

On January 9, 2007, respondents filed a Motion to Declare Defendants in Default, arguing that despite service of summons on September 25, 2006, petitioners failed to file their answer.

On May 28, 2007, petitioners filed their Answer with Motion to Dismiss.

On June 5, 2007, respondents filed their Reply to Answer, arguing that petitioners' Answer was belatedly filed, which is why they filed a motion to declare petitioners in default; and for this reason, they prayed that the Answer be stricken off the record.

On December 26, 2007, the RTC issued an Order decreeing as follows:

> WHEREFORE, for failure to file their responsive answer within the reglementary period of fifteen (15) days, defendants are hereby declared in default. The pleadings filed by the defendant on May 30, 2007 is [sic] hereby denied.[9]

Petitioners moved to reconsider, but the trial court was unmoved. It proceeded to receive respondents' evidence *ex parte*.

Ruling of the Regional Trial Court

On October 21, 2008, the RTC issued a Decision[10] declaring as follows:

> The plaintiffs as represented by their attorney-in-fact, Ramon G. Flores when presented in Court reiterated the allegations in the complaint and presented in evidence the Transfer Certificate of Title No. T-308589 in the names of Jacinto Flores and Maximo Flores

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[8] *Id.* at 53.

[9] *Id.* at 69.

[10] *Id.* at 69-71.

(Exhibit "B"); the tax declaration (Exhibit "C") of the property; and the Certification (Exhibit "F") issued by Brgy. Justice Lito R. Sarte of Barangay Santiago, Bayan ng Heneral Trias, Cavite.

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In the case at bar, by a preponderance of evidence, plaintiffs have proven their case.

On September 26, 2006 the Return of Summons by the process server of this Court, Rozanno L. Morabe, as certified, stated, to wit:

> This is to certify that on September 25, 2006 the undersigned cause [sic] the service of Summons together with a copy of the complaint upon defendants x x x thru EILEEN GATARIN, one of the defendants, who received a copy of the Summons for all the defendants who refused to sign and acknowledge receipt of said summons.

This served as a proof of receipt by the defendants of the copy of the complaint upon them. However defendants filed their answer with motion to dismiss way beyond the reglementary period on May 28, 2007 which prompted this Court to deny their motion. Defendants, if indeed having a good defense, could have been vigilant in this case instead of resorting to delays in the prosecution thereof.

WHEREFORE, judgment is rendered in favor of the plaintiffs as against the defendants herein and hereby orders, to wit:

1) Ordering the defendants and their respective families and or any other persons claiming rights under them, to vacate subject parcel of land and deliver the same peacefully to the possession of the plaintiffs;

2) Ordering the defendants to pay the plaintiffs the amount of ₱10,000.00 as reasonable attorney's fees, ₱5,000.00 as litigation expenses, plus the costs of suit.

SO ORDERED.[11]

Ruling of the Court of Appeals

Petitioners filed an appeal before the CA which was docketed as CA-G.R. CV. No. 92924. On May 23, 2012,

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[11] *Id.* at 70-71.

the CA rendered the assailed Decision containing the following pronouncement:

Aggrieved, the Guyamins filed this instant appeal raising the following assignment of errors:

1. The trial court erred in not dismissing the complaint on the ground of lack of cause of action or prematurity;
2. The trial court erred in declaring the defendants in default and proceeding to receive plaintiffs' evidence ex-parte; and
3. The trial court erred and abused its discretion when it rendered its Decision favorable to the plaintiffs prior or without the filing of the plaintiffs' Formal Offer of Evidence.

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The Guyamins argue that the case should have been dismissed for failure of the Floreses to give notice or demand to vacate and to observe conciliation process in the barangay. They further argued that based on the averments in the complaint the Floreses merely reminded them to vacate but no actual demand to vacate has been given.

In this jurisdiction, there are three kinds of actions for the recovery of possession of real property and one is *accion publiciana* or the plenary action for the recovery of the real right of possession, which should be brought in the proper Regional Trial Court when the dispossession has lasted for more than one year.

After a review of the averments of the complaint, we find that the *court-a-quo* did not err in assuming jurisdiction over the case. From the allegations of the complaint it appears that the land subject of the case was originally owned by the Floreses' grandmother, Damasa Vda. De Guzman and was later acquired by their mother, Julia Guyamin who in turn transferred the ownership of the property to them. Based on the attached Transfer Certificate of Title, the property was transferred to the Floreses on May 10, 1991. The Floreses averred in the complaint that since the time the ownership of the property was transferred to them, they have been reminding the Guyamins to vacate the premises because they wanted to sell the property.

While it is true that the complaint uses the word "reminding" instead of the word "demanding", it still does not mean that no demand to vacate was made by the Floreses. It is clear on the records that the

Floreses filed a complaint for the Guyamins to vacate the premises before Office of the Barangay Chairman of Barangay Santiago, General Trias, Cavite. On the subject line of the complaint the following words are clearly written: "Ukol sa: Pagpapaalis sa bahay na nakatirik sa lupa na hindi naman kanila" which is clearly a demand to vacate.

On March 11, 2006 the Office of the Barangay Chairman issued a certificate to file action because the parties were unable to settle their dispute. Contrary to the argument of the Guyamins, the records also show that there was an attempt to settle the issues between the parties before the Office of the Barangay Chairman.

Anent the second ground raised by the Guyamins, records will also show that Return of Summons was filed by the Process Server, Rozanno L. Morabe on September 25, 2006 certifying that a copy of the summons was received on September 26, 2006 by one of the defendants Eileen Gatarin, who received a copy for all the defendants.[12] It was only on May 28, 2007 that the Guyamins filed an Answer with a Motion to Dismiss, or more than 8 months after receiving the summons, hence the *court-a-quo* did not commit any error in declaring the Guyamins in default.

As to the last error raised, it is settled that for evidence to be considered, the same must be formally offered. However, in *People v. Napat-a*, the Supreme Court relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, *viz*: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.

In the instant case, we find that the requirements have been satisfied. The exhibits were presented and marked during the *ex-parte* hearing of August 7, 2008. Therefore, notwithstanding the fact that exhibits "A" to "F" were not formally offered prior to the rendition of the Decision in Civil Case No. TMCV-0040-06 by the *court-a-quo*, the trial court judge committed no error when he admitted and considered them in the resolution of the case.

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[12] Summons was served on September 25, 2006, and the Return was issued on September 26, 2006.

WHEREFORE, in view of the foregoing, the Decision dated October 21, 2008 of the Regional Trial Court of Trece Martires City in Civil Case No. TMCV-0040-06 is AFFIRMED.

SO ORDERED.[13] (Citations omitted)

Hence, the present Petition.

Issues

In an April 23, 2014 Resolution,[14] this Court resolved to give due course to the Petition, which contains the following assignment of errors:

1. THE COURT OF APPEALS ERRED IN NOT RULING THAT THE REGIONAL TRIAL COURT COMMITTED A REVERSIBLE ERROR IN NOT DISMISSING THE COMPLAINT ON THE GROUND OF LACK OF CAUSE OF ACTION OR PREMATURITY.
2. THE COURT OF APPEALS ERRED IN FINDING THAT THE REGIONAL TRIAL COURT WAS CORRECT IN DECLARING THE PETITIONERS IN DEFAULT AND PROCEEDING TO RECEIVE RESPONDENTS' EVIDENCE *EX PARTE*.
3. THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE REGIONAL TRIAL COURT VALIDLY RENDERED ITS DECISION FAVORABLE TO THE RESPONDENTS WITHOUT THE FILING OF THE FORMAL OFFER OF EVIDENCE.[15]

Petitioners' Arguments

In their Petition and Reply,[16] petitioners insist that there is no demand to vacate the subject property, and the lack of such

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[13] *Rollo*, pp. 37-41.

[14] *Id*. at 96-97.

[15] *Id*. at 14-15.

[16] *Id*. at 90-93. Captioned as Compliance Explanation to the Show Cause Order and Reply to Respondents' Comment.

demand renders the action against them premature; that the filing of a conciliation case before the *barangay* captain (or *barangay* chairman) and the issuance of a certificate to file action in court cannot take the place of the required notice to vacate; that only Rodante was made respondent in the *barangay* conciliation process when Lucinia and Eileen should have been impleaded as well; that the Return of Summons dated September 26, 2006 is a sham; that summons was improperly served upon Rodante and Lucinia through Eileen or by substituted service; that it was impossible for Eileen to have received the summons and complaint at her residence on September 25, 2006, as she was then teaching in school; that when summons was served, Lucinia was then abroad, and so summons should have been made through publication; and that the filing of their Answer prior to respondents' motion to declare them in default, and the latter's filing of a reply to their answer, cured the defective answer.

Petitioners add that it was error for the lower courts to have ruled in favor of respondents in spite of the fact that the latter made no formal offer of their evidence; that respondents' evidence cannot therefore be considered, since it is a settled maxim that "courts will only consider as evidence that which has been formally offered";[17] that the purposes of a formal offer are to 1) enable the trial court to know the purpose or purposes for which the proponent is presenting the evidence, 2) allow opposing parties to examine the evidence and object to its admissibility, and 3) facilitate review as the appellate court will not be required to review documents not previously scrutinized by the trial court; and that the evidence presented *ex parte* is insufficient to prove respondents' case, as it failed to show how the latter came into ownership of the subject property and it failed to prove the identity of the property.

Petitioners thus pray that the CA Decision be reversed and set aside and that a new judgment be rendered ordering the dismissal of Civil Case No. TMCV-0040-06.

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[17] *Id*. at 27. Citation omitted.

Respondents' Argument

Respondents simply point out in their single-page Comment[18] that the arguments raised in the instant Petition have been adequately passed upon by the lower courts; thus, there is no cogent reason to reverse their decisions.

Our Ruling

The Court denies the Petition.

The Court notes that petitioners raise purely procedural questions and nothing more. In other words, petitioners aim to win their case not on the merit, but on *pure technicality*. But in order for this Court to even consider their arguments, petitioners should have at least shown that they have a substantial defense to respondents' claim. There must be a semblance of validity in their resistance to respondents' Complaint. However, there appears to be none at all. The fact remains that respondents are the registered owners of the subject property, per Transfer Certificate of Title No. T-308589 and the tax declaration in their names;[19] that petitioners are respondents' relatives who have been occupying the property by mere tolerance and liberality of the latter; that several times in the past, they have been "reminded" to vacate the property; and that they have failed and refused to do so, even after the conduct of conciliation proceedings before the *Barangay* Chairman.

As owners, respondents' substantive rights must be protected in the first instance; they cannot be defeated by a resort to procedural hairsplitting that gets the parties and this Court nowhere. The Court will not pretend to engage in a useless discussion of the virtues of adhering strictly to procedure, when to do so would promote a clear injustice and violation of respondents' substantive rights. More so when the result would be the same, that is, petitioners would eventually and ultimately lose their case.

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[18] *Id.* at 82.

[19] *Id.* at 49-51.

To be sure, while petitioners attached every other pleading filed and order issued below to the instant Petition, they did not attach a copy of their Answer to the Complaint if only to demonstrate to this Court that they have a plausible and substantial defense against the respondents' Complaint. To repeat, this Court will not waste its precious time and energy in a futile exercise where the result would be for naught; petitioners will not be indulged when it appears that they have no valid claim in the first place. Quite the contrary, the Court must give respondents the justice they deserve. As owners of the subject property who have been deprived of the use thereof for so many years owing to petitioners' continued occupation, and after all these years of giving unconditionally to the petitioners who are their relatives, respondents must now enjoy the fruits of their ownership. Respondents have been more than cordial in dealing with petitioners; they have shown only respect and reverence to the latter, even to the extent of using less offensive language in their complaint for fear of generating more enmity than is required. Thus, instead of using "demand," respondents chose "remind." The parties being relatives and the context and circumstances being the way they are, the choice of words is understandable. The Court will treat respondents' act as a polite demand; indeed, the law never required a harsh or impolite demand but only a categorical one.

With the clear realization that they are settling on land that they do not own, occupants of registered private lands by mere tolerance of the owners should always expect that one day, they would have to vacate the same. Their time is merely borrowed; they have no right to the property whatsoever, and their presence is merely tolerated and under the good graces of the owners. As it were, they live under constant threat of being evicted; they cannot pretend that this threat of eviction does not exist. It is never too much to ask them to give a little leeway to the property owners; after all, they have benefited from their tolerated use of the lands, while the owners have clearly lost by their inability to use the same.

Thus, this Court need only reiterate the CA's pronouncement that there could be no more categorical demand by respondents

than the filing of a case against petitioners before the *Barangay* Chairman to cause the latter's eviction from the property. The fact that only Rodante was made respondent in the conciliation process is of no moment; given the context, relation, circumstances, lack of a visible defense, and the above pronouncement, this claim of the petitioners must be treated as undue hairsplitting. This Court's "duty is to dispel any vestige of doubt rather than indulge in subtle distinctions."[20]

Regarding the claim of improper service of summons, the record reveals that the contrary is true. The court process server's Return of Summons dated September 26, 2006 exists, and must be presumed regular. The mere fact that the RTC, and even the respondents, requested at different stages in the proceedings that summons be served once more upon petitioners does not prove that the service thereof made on September 25, 2006 was invalid; it only means that the court and parties desire the service of summons anew which was clearly unnecessary. The claim that Lucinia was then abroad is of no moment either; there is no evidence to support this self-serving claim.

The filing of petitioners' answer prior to respondents' motion to declare them in default, and the latter's filing of a reply, do not erase the fact that petitioners' answer is late. Respondents' reply filed thereafter is, like the belated answer, a mere scrap of paper, as it proceeds from the said answer.

Finally, the Court supports the CA's pronouncement that since respondents' exhibits were presented and marked during the *ex parte* hearing of August 7, 2008, the trial court judge committed no error when he admitted and considered them in the resolution of the case notwithstanding that no formal offer of evidence was made. The pieces of evidence were identified during the *ex parte* hearing and marked as Exhibits "A" to "F" for respondents and were incorporated into the records of the case. As a matter of fact, the RTC referred to them in his October 21, 2008 Decision. If they were not included in the

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[20] *Alliance Insurance & Surety Company, Inc. v. Hon. Piccio*, 105 Phil. 1192, 1202 (1959).

record, the RTC Judge could not have referred to them in arriving at judgment.

While it is true that the rules of procedure are intended to promote rather than frustrate the ends of justice, and the swift unclogging of court docket is a laudable objective, it nevertheless must not be met at the expense of substantial justice. This Court has time and again reiterated the doctrine that the **rules of procedure are mere tools aimed at facilitating the attainment of justice**, rather than its frustration. **A strict and rigid application of the rules must always be eschewed when it would subvert the primary objective of the rules, that is, to enhance fair trials and expedite justice. Technicalities should never be used to defeat the substantive rights of the other party**. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Considering that there was **substantial compliance**, a liberal interpretation of procedural rules in this x x x case is more in keeping with the constitutional mandate to secure social justice.[21] (Emphasis supplied)

By not attaching a copy of their Answer to their Petition, petitioners are shielding themselves from a perusal of their defense; in a sense, this is quite revealing of the merits of their claim, and in another, it is an ingenious scheme that this Court censures. Indeed, they failed to realize that this Court is not composed of machines that will mindlessly and mechanically solve a problem at the touch of a button; it will not be forced into motion on petitioners' turn of a key. They must be reminded that —

The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice, but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts, in rendering justice, have always been, as they in fact ought to be, conscientiously guided by the norm that on the balance, **technicalities take a backseat to substantive rights,**

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[21] *Victorio-Aquino v. Pacific Plans, Inc.*, G.R. No. 193108, December 10, 2014, 744 SCRA 480, 500, citing *Alcantara v. The Philippine Commercial and International Bank*, 648 Phil. 267, 279-280 (2010).

and not the other way around. As applied to the instant case, in the language of then Chief Justice Querube Makalintal, **technicalities 'should give way to the realities of the situation.'**[22] (Emphasis supplied)

WHEREFORE, the Petition is **DENIED**. The May 23, 2012 Decision of the Court of Appeals in CA-G.R. CV. No. 92924 is **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 202454. April 25, 2017]

CALIFORNIA MANUFACTURING COMPANY, INC., *petitioner, vs.* **ADVANCED TECHNOLOGY SYSTEM, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* IS LIMITED TO REVIEWING ERRORS OF LAW.— Whether one corporation is merely an alter ego of another, a sham or subterfuge, and whether the requisite quantum of evidence has been adduced to warrant the puncturing of the corporate veil are questions of fact. Relevant to this point is the settled rule that in a petition for review on certiorari like this case, this Court's jurisdiction is limited to reviewing errors of law in the

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[22] *Heirs of Spouses Natonton v. Spouses Magaway*, 520 Phil. 723, 729-730 (2006).

absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous. This rule alone warrants the denial of the petition, which essentially asks us to reevaluate the evidence adduced by the parties and the credibility of the witnesses presented.

2. COMMERCIAL LAW; CORPORATION LAW; CORPORATIONS; PIERCING OF THE CORPORATE VEIL; WHEN APPLICABLE.— Any piercing of the corporate veil must be done with caution. As the CA had correctly observed, it must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of rights. Moreover, the wrongdoing must be clearly and convincingly established. *Sarona v. NLRC* instructs, thus: x x x The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

3. ID.; ID.; ID.; ID.; ID.; ALTER EGO DOCTRINE; DETERMINED BY CONTROL TEST, FRAUD TEST AND HARM TEST.— CMCI's alter ego theory rests on the alleged interlocking boards of directors and stock ownership of the two corporations. The CA, however, rejected this theory based on the settled rule that mere ownership by a single stockholder of even all or nearly all of the capital stocks of a corporation, by itself, is not sufficient ground to disregard the corporate veil. We can only sustain the CA's ruling. The instrumentality or control test of the alter ego doctrine requires not mere majority or complete stock control, but complete domination of finances, policy and business practice with respect to the transaction in question. The corporate entity must be shown to have no separate mind, will, or existence of its own at the time of the transaction. x x x The fraud test, which is the second of the three-prong test to determine the application of the alter ego doctrine, requires that the parent corporation's conduct in using the subsidiary

corporation be unjust, fraudulent or wrongful. Under the third prong, or the harm test, a causal connection between the fraudulent conduct committed through the instrumentality of the subsidiary and the injury suffered or the damage incurred by the plaintiff has to be established.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT; COMPENSATION; REQUISITES.— Article 1279 of the Civil Code provides: ARTICLE 1279. In order that compensation may be proper, it is necessary: (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other; (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated; (3) That the two debts be due; (4) That they be liquidated and demandable; (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor. The law, therefore, requires that the debts be liquidated and demandable. Liquidated debts are those whose exact amounts have already been determined.

APPEARANCES OF COUNSEL

Law Firm Of R.V. Domingo & Associates for petitioner.
Cruz Marcelo & Tenefrancia for petitioner.

D E C I S I O N

SERENO, *C.J.*:

Before us is a Petition for Review on Certiorari assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 94409, which denied the appeal filed by California Manufacturing Company, Inc. (CMCI) from the Decision[2] of

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[1] *Rollo*, pp. 57-78. The Decision is dated 25 August 2011 and it was penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Remedios Salazar-Fernando and Michael P. Elbinias concurring.

[2] *Id*. at 84-88. The Decision is dated 13 April 2009 and was penned by Judge Amelia C. Manalastas.

Regional Trial Court (RTC) of Pasig City, Branch 268, in the Complaint for Sum of Money[3] filed by Advanced Technology Systems, Inc. (ATSI) against the former.

The RTC ordered CMCI to pay ATSI the amount of ₱443,729.39 for the unpaid rentals for a Prodopak machine, plus legal interest from the date of extra-judicial demand until full payment; 30% of the judgment award as attorney's fees; and the costs of litigation. The CA affirmed the trial court's decision, but it deleted the award of attorney's fees for lack of factual and legal basis and ordered CMCI to pay the costs of litigation.

THE ANTECEDENT FACTS

Petitioner CMCI is a domestic corporation engaged in the food and beverage manufacturing business. Respondent ATSI is also a domestic corporation that fabricates and distributes food processing machinery and equipment, spare parts, and its allied products.[4]

In August 2001, CMCI leased from ATSI a Prodopak machine which was used to pack products in 20-ml. pouches.[5] The parties agreed to a monthly rental of ₱98,000 exclusive of tax. Upon receipt of an open purchase order on 6 August 2001, ATSI delivered the machine to CMCI's plant at Gateway Industrial Park, General Trias, Cavite on 8 August 2001.

In November 2003, ATSI filed a Complaint for Sum of Money[6] against CMCI to collect unpaid rentals for the months of June, July, August, and September 2003. ATSI alleged that CMCI was consistently paying the rents until June 2003 when the latter defaulted on its obligation without just cause. ATSI also claimed that CMCI ignored all the billing statements and its

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[3] The case was docketed as Civil Case No. 69735.

[4] RTC Records, p. 41.

[5] *Id*. at 6.

[6] *Id*. at 1-11.

demand letter. Hence, in addition to the unpaid rents ATSI sought payment for the contingent attorney's fee equivalent to 30% of the judgment award.

CMCI moved for the dismissal of the complaint on the ground of extinguishment of obligation through legal compensation. The RTC, however, ruled that the conflicting claims of the parties required trial on the merits. It therefore dismissed the motion to dismiss and directed CMCI to file an Answer.[7]

In its Answer,[8] CMCI averred that ATSI was one and the same with Processing Partners and Packaging Corporation (PPPC), which was a toll packer of CMCI products. To support its allegation, CMCI submitted copies of the Articles of Incorporation and General Information Sheets (GIS)[9] of the two corporations. CMCI pointed out that ATSI was even a stockholder of PPPC as shown in the latter's GIS.[10]

CMCI alleged that in 2000, PPPC agreed to transfer the processing of CMCI's product line from its factory in Meycauayan to Malolos, Bulacan. Upon the request of PPPC, through its Executive Vice President Felicisima Celones, CMCI advanced ₱4 million as mobilization fund. PPPC President and Chief Executive Officer Francis Celones allegedly committed to pay the amount in 12 equal instalments deductible from PPPC's monthly invoice to CMCI beginning in October 2000.[11] CMCI likewise claims that in a letter dated 30 July 2001,[12] Felicisima proposed to set off PPPC's obligation to pay the mobilization fund with the rentals for the Prodopak machine.

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[7] *Id.* at 125 (Order dated 2 August 2004).

[8] *Id*. at 131-142. The title of the pleading is Answer Ad Cautelam as CMCI reserved the filing of a Petition for *Certiorari* within the period allowed by the Rules.

[9] *Id*. at 149-204, 564-638.

[10] *Id*. at 203.

[11] *Id*. at 144, 612.

[12] *Id*. at 145, 560.

CMCI argued that the proposal was binding on both PPPC and ATSI because Felicisima was an officer and a majority stockholder of the two corporations. Moreover, in a letter dated 16 September 2003,[13] she allegedly represented to the new management of CMCI that she was authorized to request the offsetting of PPPC's obligation with ATSI's receivable from CMCI. When ATSI filed suit in November 2003, PPPC's debt arising from the mobilization fund allegedly amounted to ₱10,766,272.24.

Based on the above, CMCI argued that legal compensation had set in and that ATSI was even liable for the balance of PPPC's unpaid obligation after deducting the rentals for the Prodopak machine.

After trial, the RTC rendered a Decision in favor of ATSI with the following dispositive portion:

> WHEREFORE, foregoing premises considered, judgment is hereby rendered in favor of plaintiff and against the defendant, ordering the latter to pay the former, the following sums:
>
> 1. Php443,729.39 representing the unpaid rental for the prodopak machine plus legal interest from the date of extra judicial demand (October 13, 2003 – Exh. "E") until satisfaction of this judgment;
>
> 2. 30% of the judgment award as and by way of attorney's fees; and
>
> 3. costs of litigation.[14]

The trial court ruled that legal compensation did not apply because PPPC had a separate legal personality from its individual stockholders, the Spouses Celones, and ATSI. Moreover, there was no board resolution or any other proof showing that Felicisima's proposal to set-off the unpaid mobilization fund with CMCI's rentals to ATSI for the Prodopak Machine had been authorized by the two corporations. Consequently, the

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[13] *Id.* at 146-148, 561-563.

[14] *Id.* at 88.

RTC ruled that CMCI's financial obligation to pay the rentals for the Prodopak machine stood and that its claim against PPPC could be properly ventilated in the proper proceeding upon payment of the required docket fees.[15]

On appeal by CMCI, the CA affirmed the trial court's ruling that legal compensation had not set in because the element of mutuality of parties was lacking. Likewise, the appellate court sustained the trial court's refusal to pierce the corporate veil. It ruled that there must be clear and convincing proof that the Spouses Celones had used the separate personalities of ATSI or PPPC as a shield to commit fraud or any wrong against CMCI, which was not existing in this case.[16]

Aside from the absence of a board resolution issued by ATSI, the CA observed that the letter dated 30 July 2001 clearly showed that Felicisima's proposal to effect the offsetting of debts was limited to the obligation of PPPC.[17] The appellate court thus sustained the trial court's finding that ATSI was not bound by Felicisima's conduct.

Moreover, the CA rejected CMCI's argument that ATSI is barred by estoppel as it found no indication that ATSI had created any appearance of false fact.[18] CA also held that estoppel did not apply to PPPC because the latter was not even a party to this case.

The CA, however, deleted the trial court's award of attorney's fees and costs of litigation in favor of ATSI as it found no discussion in the body of the decision of the factual and legal justification for the award.

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[15] *Id*. at 87-88.

[16] *Id*. at 68-70.

[17] *Id*. at 71.

[18] *Id*. at 71-72.

CMCI filed a Motion for Reconsideration of the CA Decision, but the appellate court denied the motion for lack of merit.[19] Hence, this petition.[20]

THE ISSUE

The assignment of errors raised by CMCI all boil down to the question of whether the CA erred in affirming the ruling of the RTC that legal compensation between ATSI's claim against CMCI on the one hand, and the latter's claim against PPPC on the other hand, has not set in.

OUR RULING

We affirm the CA Decision *in toto*.

CMCI argues that both the RTC and the CA overlooked the circumstances that it has proven to justify the piercing of corporate veil in this case, i.e., (1) the interlocking board of directors, incorporators, and majority stockholder of PPPC and ATSI; (2) control of the two corporations by the Spouses Celones;

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[19] *Id*. at 80-82. The Order denying the Motion for Reconsideration is dated 21 June 2012, and it was penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Remedios Salazar-Fernando and Michael P. Elbinias concurring.

[20] Respondent did not file a Comment on the Petition despite several notices from the Court. The first Resolution requiring respondent to file a Comment was dated 21 January 2013 (*Rollo*, p. 102), which was received by Eric Sorodia, authorized agent of ATSI, on 5 April 2013 (*Id.* at 103). The subsequent Resolution dated 11 December 2013 containing a show cause and comply order intended was likewise received by respondent on 7 March 2014 through its authorized agent, Albert Prado (*Id*. at 107). The two resolutions were resent and duly received by respondent on 30 October 2014 as shown in the return card attached to the *rollo*. The last Resolution directing respondent to file a Comment was dated 5 August 2015 (*Id*. at 135). In the Resolution dated 27 July 2016 (*Id*. at 141-142), we noted that the show cause and comply order with copies of the Resolutions dated 21 January 2013 and 11 December 2013 were returned to the Court undelivered with the postal notation "RTS-moved out left no address." Accordingly, we ruled that respondent's right to file Comment was deemed waived and we directed the Clerk of Court, Court of Appeals, to elevate the complete records of the case.

and (3) the two corporations were mere alter egos or business conduits of each other. CMCI now asks us to disregard the separate corporate personalities of ATSI and PPPC based on those circumstances and to enter judgment in favor of the application of legal compensation.

Whether one corporation is merely an alter ego of another, a sham or subterfuge, and whether the requisite quantum of evidence has been adduced to warrant the puncturing of the corporate veil are questions of fact.[21] Relevant to this point is the settled rule that in a petition for review on certiorari like this case, this Court's jurisdiction is limited to reviewing errors of law in the absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous.[22] This rule alone warrants the denial of the petition, which essentially asks us to reevaluate the evidence adduced by the parties and the credibility of the witnesses presented.

We have reviewed the evidence on record and have found no cogent reason to disturb the findings of the courts *a quo* that ATSI is distinct and separate from PPPC, or from the Spouses Celones.

Any piercing of the corporate veil must be done with caution.[23] As the CA had correctly observed, it must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of rights. Moreover, the wrongdoing must be clearly and convincingly established. *Sarona v. NLRC*[24] instructs, thus:

Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved.

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[21] *Philippine National Bank v. Hydro Resources Contractors Corporation,* 706 Phil. 297 (2013).

[22] *Bank of Philippine Islands v. Bank of Philippine Islands Employees Union-Metro Manila,* 693 Phil. 82 (2012) citing *Retuya v. Dumarpa,* 455 Phil. 734 (2003).

[23] *Vda. de Roxas v. Our Lady's Foundation, Inc.,* 705 Phil. 505 (2013).

[24] 679 Phil. 394 (2012).

However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the concept of corporate entity was not meant to promote unfair objectives.

The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[25]

CMCI's alter ego theory rests on the alleged interlocking boards of directors and stock ownership of the two corporations. The CA, however, rejected this theory based on the settled rule that mere ownership by a single stockholder of even all or nearly all of the capital stocks of a corporation, by itself, is not sufficient ground to disregard the corporate veil. We can only sustain the CA's ruling. The instrumentality or control test of the alter ego doctrine requires not mere majority or complete stock control, but complete domination of finances, policy and business practice with respect to the transaction in question. The corporate entity must be shown to have no separate mind, will, or existence of its own at the time of the transaction.[26]

Without question, the Spouses Celones are incorporators, directors, and majority stockholders of the ATSI and PPPC. But that is all that CMCI has proven. There is no proof that PPPC controlled the financial policies and business practices of ATSI either in July 2001 when Felicisima proposed to set off the unpaid ₱3.2 million mobilization fund with CMCI's

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[25] *Supra*

[26] *Supra* note 21.

rental of Prodopak **machines;** or in August 2001 when the lease agreement between CMCI and ATSI commenced. Assuming *arguendo* that Felicisima was sufficiently clothed with authority to propose the offsetting of obligations, her proposal cannot bind ATSI because at that time the latter had no transaction yet with CMCI. Besides, CMCI had leased only one Prodopak machine. Felicisima's reference to the Prodopak machines in its letter in July 2001 could only mean that those were different from the Prodopak machine that CMCI had leased from ATSI.

Contrary to the claim of CMCI, none of the letters from the Spouses Celones tend to show that ATSI was even remotely involved in the proposed offsetting of the outstanding debts of CMCI and PPPC. Even Felicisima's letter to the new management of CMCI in 2003 contains nothing to support CMCI's argument that Felicisima represented herself to be clothed with authority to propose the offsetting. For clarity, we quote below the relevant portions of her letter:

Gentlemen:

I apologize for writing this letter. But kindly spare me your time and allow to ventilate my grievances against California Manufacturing Corporation x x x. I had formally lodged my grievances with the management of CMC, but until now, no action has been done yet. It is on this spirit and time tested principle of diplomacy that I write this letter.

I am the Executive Vice President of Processing Partners & Packaging Corporation (PPPC), a duly organized domestic corporation, engaged in the toll packing business.

Sometime in November of 1996, CMC availed of the toll packing services of PPPC. At the outset, business relationship between the two was going smoothly. In due time, PPPC proved its name to CMC in delivering quality toll packing services. As a matter of fact, after the expiration of the toll packing contract, CMC still retained the services of PPPC. Thus, sometime in the year 2000, CMC executed another toll packing contract with PPC.

However, the business relationship unexpectedly turned sour when CMC changed its Management in the latter part of 2002. Since then

CMC's new management has been committing unsound business practices prejudicial to the interests of PPPC.

x x x x x x x x x

Failure of CMC to honor its agreement with PPC anent the pickling machinery

x x x x x x x x x

Leapfrog Plant/Jasmine and Rose Plant

x x x x x x x x x

Pre-termination of toll [p]acking [a]greement for KLS Spaghetti Sauce without just cause

x x x x x x x x x

Unpaid rentals for the lease of machinery from Advanced Technology Systems, Inc.

CMC has been leasing a machinery of Advanced Technology Systems, Inc. (Advanced Tech), a domestic corporation of which I am also the majority stockholder. **CMC owes Advanced Tech. unpaid rentals in the amount of ₱443,729.37, but despite various demands, CMC refused to pay Advanced Tech**.

We have already formally lodged our grievances concerning the foregoing with the management of CMC. However, until now, no action has been done. We believe that before we take coercive actions available under the law, it is wise to bring said grievances first to your attention to exhaust available venues for amicable settlement.

Though **PPPC's grievances** are ripe for judicial action, we still hope that we can settle [the] same amicably. However, if we run out of choices, we will [be] constrained to invoke the aid of the appropriate court. (Emphases supplied)[27]

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[27] Records, pp. 146-148.

Nothing in the narration above supports CMCI's claim that it had been led to believe that ATSI and PPPC were one and the same; or, that ATSI's collectible was intertwined with the business transaction of PPPC with CMCI.

In all its pleadings, CMCI averred that the ₱4 million mobilization fund was in furtherance of its agreement with PPPC in 2000. Prior thereto, PPPC had been a toll packer of its products as early as 1996. Clearly, CMCI had been dealing with PPPC as a distinct juridical person acting through its own corporate officers from 1996 to 2003. CMCI's dealing with ATSI began only in August 2001. It appears, however, that CMCI now wants the Court to gloss over the separate corporate existence ATSI and PPPC notwithstanding the dearth of evidence showing that either PPPC or ATSI had used their corporate cover to commit fraud or evade their respective obligations to CMCI. It even appears that CMCI faithfully discharged its obligation to ATSI for a good two years without raising any concern about its relationship to PPPC.

The fraud test, which is the second of the three-prong test to determine the application of the alter ego doctrine, requires that the parent corporation's conduct in using the subsidiary corporation be unjust, fraudulent or wrongful. Under the third prong, or the harm test, a causal connection between the fraudulent conduct committed through the instrumentality of the subsidiary and the injury suffered or the damage incurred by the plaintiff has to be established.[28] None of these elements have been demonstrated in this case. Hence, we can only agree with the CA and RTC in ruling out mutuality of parties to justify the application of legal compensation in this case.

Article 1279 of the Civil Code provides:

ARTICLE 1279. In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

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[28] *Supra* note 20.

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

The law, therefore, requires that the debts be liquidated and demandable. Liquidated debts are those whose exact amounts have already been determined.[29]

CMCI has not presented any credible proof, or even just an exact computation, of the supposed debt of PPPC. It claims that the mobilization fund that it had advanced to PPPC was in the amount of ₱4 million. Yet, Felicisima's proposal to conduct offsetting in her letter dated 30 July 2001 pertained to a ₱3.2 million debt of PPPC to CMCI. Meanwhile, in its Answer to ATSI's complaint, CMCI sought to set off its unpaid rentals against the alleged ₱10 million debt of PPPC. The uncertainty in the supposed debt of PPPC to CMCI negates the latter's invocation of legal compensation as justification for its non-payment of the rentals for the subject Prodopak machine.

WHEREFORE, the Decision dated 25 August 2011 and Resolution dated 21 June 2012 issued by the Court of Appeals in CA-G.R. CV No. 94409 are **AFFIRMED**. The instant Petition is **DENIED** for lack of merit.

SO ORDERED.

Leonardo-de Castro, del Castillo, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

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[29] *Asia Trust Development Bank v. Tuble,* 691 Phil. 732 (2012).

FIRST DIVISION

[G.R. No. 210032. April 25, 2017]

DUTCH MOVERS, INC., CESAR LEE and YOLANDA LEE, *petitioners, vs.* **EDILBERTO**[1] **LEQUIN, CHRISTOPHER R. SALVADOR, REYNALDO**[2] **L. SINGSING, and RAFFY B. MASCARDO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED IN A PETITION UNDER RULE 45; EXCEPTIONS; FACTUAL FINDINGS OF THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE LOWER COURT.—** To begin with, the Court is not a trier of facts and only questions of law may be raised in a petition under Rule 45 of the Rules of Court. This rule, nevertheless, allows certain exceptions, which include such instance where the factual findings of the CA are contrary to those of the lower court or tribunal. Considering the divergent factual findings of the CA and the NLRC in this case, the Court deems it necessary to examine, review and evaluate anew the evidence on record.

2. **ID.; PRINCIPLE OF IMMUTABILITY OF JUDGMENT; EXCEPTIONS; WHEN THERE IS A SUPERVENING EVENT OCCURRING AFTER THE JUDGMENT BECOMES FINAL AND EXECUTORY, WHICH RENDERS THE DECISION UNENFORCEABLE.—** Moreover, after a thorough review of the records, the Court finds that contrary to petitioners' claim, *Valderrama v. National Labor Relations Commission*, and *David v. Court of Appeals* are applicable here. In said cases, the Court held that the principle of immutability of judgment, or the rule that once a judgment has become final and executory, the same can no longer be altered or modified and the court's duty is only to order its execution, is not absolute. One of its exceptions is when there

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[1] Spelled in some parts of the records as Ediblerto.

[2] Spelled in some parts of the records as Reynalddo.

is a supervening event occurring after the judgment becomes final and executory, which renders the decision unenforceable. To note, a supervening event refers to facts that transpired after a judgment has become final and executory, or to new situation that developed after the same attained finality. Supervening events include matters that the parties were unaware of before or during trial as they were not yet existing during that time.

3. **COMMERCIAL LAW; CORPORATION LAW; PIERCING THE VEIL OF CORPORATE FICTION; PERSONAL LIABILITY MAY BE ATTACHED AGAINST RESPONSIBLE PERSON IF THE CORPORATION'S PERSONALITY WAS USED TO DEFEAT PUBLIC CONVENIENCE, JUSTIFY WRONG, PROTECT FRAUD OR DEFEND CRIME.—** [T]he Court is not unmindful of the basic tenet that a corporation has a separate and distinct personality from its stockholders, and from other corporations it may be connected with. However, such personality may be disregarded, or the veil of corporate fiction may be pierced attaching personal liability against responsible person if the corporation's personality "is used to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat the labor laws x x x." By responsible person, we refer to an individual or entity responsible for, and who acted in bad faith in committing illegal dismissal or in violation of the Labor Code; or one who actively participated in the management of the corporation. Also, piercing the veil of corporate fiction is allowed where a corporation is a mere alter ego or a conduit of a person, or another corporation. x x x [P]iercing the veil of corporate fiction is allowed, and responsible persons may be impleaded, and be held solidarily liable even after final judgment and on execution, provided that such persons deliberately used the corporate vehicle to unjustly evade the judgment obligation, or resorted to fraud, bad faith, or malice in evading their obligation.

APPEARANCES OF COUNSEL

Aimee C. Rosales for petitioners.
Nenita C. Mahinay for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Before the Court is a Petition for Review on *Certiorari* assailing the July 1, 2013 Decision[3] of the Court of Appeals in CA-G.R. SP No. 113774. The CA reversed and set aside the October 29, 2009[4] and January 29, 2010[5] Resolutions of the National Labor Relations Commission (NLRC), which in turn reversed and set aside the Order[6] dated September 4, 2009 of Labor Arbiter Lilia S. Savari (LA Savari).

Also challenged is the November 13, 2013 CA Resolution,[7] which denied the Motion for Reconsideration on the assailed Decision.

Factual Antecedents

This case is an offshoot of the illegal dismissal Complaint[8] filed by Edilberto Lequin (Lequin), Christopher Salvador, Reynaldo Singsing, and Raffy Mascardo (respondents) against Dutch Movers, Inc. (DMI), and/or spouses Cesar Lee and Yolanda Lee (petitioners), its alleged President/Owner, and Manager respectively.

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[3] CA *rollo*, pp. 406-422; penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Rosmari D. Carandang and Ricardo R. Rosario.

[4] *Id.* at 51-59; penned by Commissioner Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora.

[5] *Id*. at 33-35; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioner Teresita D. Castillon-Lora. Commissioner Napoleon M. Menese took no part.

[6] *Id*. at 75-76.

[7] *Id*. at 452-453.

[8] *Id*. at 223-224.

In their Amended Complaint and Position Paper,[9] respondents stated that DMI, a domestic corporation engaged in hauling liquefied petroleum gas, employed Lequin as truck driver, and the rest of respondents as helpers; on December 28, 2004, Cesar Lee, through the Supervisor Nazario Furio, informed them that DMI would cease its hauling operation for no reason; as such, they requested DMI to issue a formal notice regarding the matter but to no avail. Later, upon respondents' request, the DOLE NCR[10] issued a certification[11] revealing that DMI did not file any notice of business closure. Thus, respondents argued that they were illegally dismissed as their termination was without cause and only on the pretext of closure.

On October 28, 2005, LA Aliman D. Mangandog dismissed[12] the case for lack of cause of action.

On November 23, 2007, the NLRC reversed and set aside the LA Decision. It ruled that respondents were illegally dismissed because DMI simply placed them on standby, and no longer provide them with work. The dispositive portion of the NLRC Decision[13] reads:

> WHEREFORE, the Decision dated October 28, 2005 is hereby REVERSED and SET ASIDE and a new judgment is hereby rendered ordering respondent Dutch Movers, Inc. to reinstate complainants to their former positions without loss of seniority rights and other privileges. Respondent corporation is also hereby ordered to pay complainants their full backwages from the time they were illegally dismissed up to the date of their actual reinstatement and ten (10%) percent of the monetary award as for attorney's fees.
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> SO ORDERED.[14]

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[9] *Id*. at 214-221.

[10] Department of Labor and Employment – National Capital Region.

[11] CA *rollo,* p. 226.

[12] *Id*. at 157-165.

[13] *Id*. at 130-136; penned by Commissioner Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

[14] *Id*. at 135-136.

The NLRC Decision became final and executory on December 30, 2007.[15] And, on February 14, 2008, the NLRC issued an Entry of Judgment[16] on the case.

Consequently, respondents filed a Motion for Writ of Execution.[17] Later, they submitted a Reiterating Motion for Writ of Execution with Updated Computation of Full Backwages.[18] Pending resolution of these motions, respondents filed a Manifestation and Motion to Implead[19] stating that upon investigation, they discovered that DMI no longer operates. They, nonetheless, insisted that petitioners – who managed and operated DMI, and consistently represented to respondents that they were the owners of DMI – continue to work at Toyota Alabang, which they (petitioners) also own and operate. They further averred that the Articles of Incorporation (AOI) of DMI ironically did not include petitioners as its directors or officers; and those named directors and officers were persons unknown to them. They likewise claimed that per inquiry with the SEC[20] and the DOLE, they learned that DMI did not file any notice of business closure; and the creation and operation of DMI was attended with fraud making it convenient for petitioners to evade their legal obligations to them.

Given these developments, respondents prayed that petitioners, and the officers named in DMI's AOI, which included Edgar N. Smith and Millicent C. Smith (spouses Smith), be impleaded, and be held solidarily liable with DMI in paying the judgment awards.

In their Opposition to Motion to Implead,[21] spouses Smith alleged that as part of their services as lawyers, they lent their

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[15] As culled from the Writ of Execution dated July 31, 2009; *id*. at 84.

[16] *Id*. at 91.

[17] *Id*. at 127-128.

[18] *Id*. at 124-126.

[19] *Id*. at 105-111.

[20] Securities and Exchange Commission.

[21] CA *rollo*, pp. 98-104.

names to petitioners to assist them in incorporating DMI. Allegedly, after such undertaking, spouses Smith promptly transferred their supposed rights in DMI in favor of petitioners.

Spouses Smith stressed that they never participated in the management and operations of DMI, and they were not its stockholders, directors, officers, or managers at the time respondents were terminated. They further insisted that they were not afforded due process as they were not impleaded from the inception of the illegal dismissal case; and hence, they cannot be held liable for the liabilities of DMI.

On April 1, 2009, LA Savari issued an Order[22] holding petitioners liable for the judgment awards. LA Savari decreed that petitioners represented themselves to respondents as the owners of DMI; and were the ones who managed the same. She further noted that petitioners were afforded due process as they were impleaded from the beginning of this case.

Later, respondents filed anew a Reiterating Motion for Writ of Execution and Approve[d] Updated Computation of Full Backwages.[23]

On July 31, 2009, LA Savari issued a Writ of Execution, the pertinent portion of which reads:

NOW THEREFORE, you [Deputy Sheriff] are commanded to proceed to respondents DUTCH MOVERS and/or CESAR LEE and YOLANDA LEE with address at c/o Toyota Alabang, Alabang Zapote Road, Las Pinas City or wherever they may be found within the jurisdiction of the Republic of the Philippines and collect from said respondents the amount of THREE MILLION EIGHT HUNDRED EIGHTEEN THOUSAND ONE HUNDRED EIGHTY SIX PESOS & 66/100 (Php3,818,186.66) representing Complainants' awards plus 10% Attorney's fees in the amount of THREE HUNDRED EIGHTY ONE THOUSAND EIGHT HUNDRED EIGHTEEN PESOS & 66/100 (Php381,818.66) and execution fee in the amount of FORTY THOUSAND FIVE HUNDRED PESOS (Php40,500.00) or a total

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[22] *Id*. at 95-97.

[23] *Id*. at 87-90.

of FOUR MILLION TWO HUNDRED FORTY THOUSAND FIVE HUNDRED FIVE PESOS & 32/100 (Php4,240,505.32) x x x[24]

Petitioners moved[25] to quash the Writ of Execution contending that the April 1, 2009 LA Order was void because the LA has no jurisdiction to modify the final and executory NLRC Decision, and the same cannot anymore be altered or modified since there was no finding of bad faith against them.

Ruling of the Labor Arbiter

On September 4, 2009, LA Savari denied petitioners' Motion to Quash because it did not contain any ground that must be set forth in such motion.

Thus, petitioners appealed to the NLRC.

Ruling of the National Labor Relations Commission

On October 29, 2009, the NLRC quashed the Writ of Execution insofar as it held petitioners liable to pay the judgment awards. The decretal portion of the NLRC Resolution reads:

WHEREFORE, in view of the foregoing, the assailed Order dated September 4, 2009 denying respondents' Motion to Quash Writ is hereby REVERSED and SET ASIDE. The Writ of Execution dated July 13,[26] 2009 is hereby QUASHED insofar as it holds individual respondents Cesar Lee and Yolanda Lee liable for the judgment award against the complainants.

Let the entire record of the case be forwarded to the Labor Arbiter of origin for appropriate proceedings.

SO ORDERED.[27]

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[24] *Id.* at 85.

[25] *Id.* at 77-82.

[26] The Writ of Execution is dated July 31, 2009, not July 13, 2009; *id.* at 86.

[27] *Id.* at 58-59.

The NLRC ruled that the Writ of Execution should only pertain to DMI since petitioners were not held liable to pay the awards under the final and executory NLRC Decision. It added that petitioners could not be sued personally for the acts of DMI because the latter had a separate and distinct personality from the persons comprising it; and, there was no showing that petitioners were stockholders or officers of DMI; or even granting that they were, they were not shown to have acted in bad faith against respondents.

On January 29, 2010, the NLRC denied respondents' Motion for Reconsideration.

Undaunted, respondents filed a Petition for *Certiorari* with the CA ascribing grave abuse of discretion against the NLRC in quashing the Writ of Execution insofar as it held petitioners liable to pay the judgment awards.

Ruling of the Court of Appeals

On July 1, 2013, the CA reversed and set aside the NLRC Resolutions, and accordingly affirmed the Writ of Execution impleading petitioners as party-respondents liable to answer for the judgment awards.

The CA ratiocinated that as a rule, once a judgment becomes final and executory, it cannot anymore be altered or modified; however, an exception to this rule is when there is a supervening event, which renders the execution of judgment unjust or impossible. It added that petitioners were afforded due process as they were impleaded from the beginning of the case; and, respondents identified petitioners as the persons who hired them, and were the ones behind DMI. It also noted that such participation of petitioners was confirmed by DMI's two incorporators who attested that they lent their names to petitioners to assist the latter in incorporating DMI; and, after their undertaking, these individuals relinquished their purported interests in DMI in favor of petitioners.

On November 13, 2013, the CA denied the Motion for Reconsideration on the assailed Decision.

Thus, petitioners filed this Petition raising the following grounds:

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT RESPONDENTS SHOULD BE LIABLE FOR THE JUDGMENT AWARD TO RESPONDENTS BASED ON THE FOLLOWING:

I

THE VALDERAMA VS. NLRC AND DAVID VS. CA ARE NOT APPLICABLE IN THE INSTANT CASE.

II

THERE IS NO LEGAL BASIS TO PIERCE THE VEIL OF CORPORATE FICTION OF DUTCH MOVERS, INC.[28]

Petitioners argue that the circumstances in *Valderrama v. National Labor Relations Commission*[29] differ with those of the instant case. They explain that in *Valderrama*, the LA therein granted a motion for clarification. In this case, however, the LA made petitioners liable through a mere manifestation and motion to implead filed by respondents. They further stated that in *Valderrama*, the body of the decision pointed out the liability of the individual respondents therein while here, there was no mention in the November 23, 2007 NLRC Decision regarding petitioners' liability. As such, they posit that they cannot be held liable under said NLRC Decision.

In addition, petitioners claim that there is no basis to pierce the veil of corporate fiction because DMI had a separate and distinct personality from the officers comprising it. They also insist that there was no showing that the termination of respondents was attended by bad faith.

In fine, petitioners argue that despite the allegation that they operated and managed the affairs of DMI, they cannot be held accountable for its liability in the absence of any showing of bad faith on their part.

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[28] *Rollo*, p. 40.

[29] 326 Phil. 477 (1996).

Respondents, on their end, counter that petitioners were identified as the ones who owned and managed DMI and therefore, they should be held liable to pay the judgment awards. They also stress that petitioners were consistently impleaded since the filing of the complaint and thus, they were given the opportunity to be heard.

Issue

Whether petitioners are personally liable to pay the judgment awards in favor of respondents

Our Ruling

The Court denies the Petition.

To begin with, the Court is not a trier of facts and only questions of law may be raised in a petition under Rule 45 of the Rules of Court. This rule, nevertheless, allows certain exceptions, which include such instance where the factual findings of the CA are contrary to those of the lower court or tribunal. Considering the divergent factual findings of the CA and the NLRC in this case, the Court deems it necessary to examine, review and evaluate anew the evidence on record.[30]

Moreover, after a thorough review of the records, the Court finds that contrary to petitioners' claim, *Valderrama v. National Labor Relations Commission*,[31] and *David v. Court of Appeals*[32] are applicable here. In said cases, the Court held that the principle of immutability of judgment, or the rule that once a judgment has become final and executory, the same can no longer be altered or modified and the court's duty is only to order its execution, is not absolute. One of its exceptions is when there is a supervening event occurring after the judgment becomes final and executory, which renders the decision unenforceable.[33]

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[30] *Co v. Vargas*, 676 Phil. 463, 470-471 (2011).

[31] *Supra* note 29.

[32] 375 Phil. 177 (1999).

[33] *Valderrama v. National Labor Relations Commission*, *supra* note 29 at 483-484; *David v. Court of Appeals*, *supra* at 186-187.

To note, a supervening event refers to facts that transpired after a judgment has become final and executory, or to new situation that developed after the same attained finality. Supervening events include matters that the parties were unaware of before or during trial as they were not yet existing during that time.[34]

In *Valderrama*, the supervening event was the closure of Commodex, the company therein, after the decision became final and executory, and without any showing that it filed any proceeding for bankruptcy. The Court held that therein petitioner, the owner of Commodex, was personally liable for the judgment awards because she controlled the company.

Similarly, supervening events transpired in this case after the NLRC Decision became final and executory, which rendered its execution impossible and unjust. Like in *Valderrama*, during the execution stage, DMI ceased its operation, and the same did not file any formal notice regarding it. Added to this, in their Opposition to the Motion to Implead, spouses Smith revealed that they only lent their names to petitioners, and they were included as incorporators just to assist the latter in forming DMI; after such undertaking, spouses Smith immediately transferred their rights in DMI to petitioners, which proved that petitioners were the ones in control of DMI, and used the same in furthering their business interests.

In considering the foregoing events, the Court is not unmindful of the basic tenet that a corporation has a separate and distinct personality from its stockholders, and from other corporations it may be connected with. However, such personality may be disregarded, or the veil of corporate fiction may be pierced attaching personal liability against responsible person if the corporation's personality "is used to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat the labor laws x x x."[35] By responsible person,

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[34] *Bani Rural Bank, Inc. v. De Guzman*, 721 Phil. 84, 97 (2013).

[35] *Concept Builders, Inc. v. National Labor Relations Commission*, 326 Phil. 955, 965 (1996).

we refer to an individual or entity responsible for, and who acted in bad faith in committing illegal dismissal or in violation of the Labor Code; or one who actively participated in the management of the corporation. Also, piercing the veil of corporate fiction is allowed where a corporation is a mere alter ego or a conduit of a person, or another corporation.[36]

Here, the veil of corporate fiction must be pierced and accordingly, petitioners should be held personally liable for judgment awards because the peculiarity of the situation shows that they controlled DMI; they actively participated in its operation such that DMI existed not as a separate entity but only as business conduit of petitioners. As will be shown below, petitioners controlled DMI by making it appear to have no mind of its own,[37] and used DMI as shield in evading legal liabilities, including payment of the judgment awards in favor of respondents.[38]

First, petitioners and DMI jointly filed their Position Paper,[39] Reply,[40] and Rejoinder[41] in contesting respondents' illegal dismissal. Perplexingly, petitioners argued that they were not part of DMI and were not privy to its dealings;[42] yet, petitioners, along with DMI, collectively raised arguments on the illegal dismissal case against them.

Stated differently, petitioners denied having any participation in the management and operation of DMI; however, they were aware of and disclosed the circumstances surrounding respondents' employment, and propounded arguments refuting that respondents were illegally dismissed.

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[36] *Guillermo v. Uson*, G.R. No. 198967, March 7, 2016.

[37] *Concept Builders, Inc. v. National Labor Relations Commission, supra* at 965-966.

[38] *Guillermo v. Uson*, *supra*.

[39] CA *rollo*, pp. 199-205.

[40] *Id*. at 188-193.

[41] *Id*. at 174-178.

[42] *Id*. at 192, 204.

To note, petitioners revealed the annual compensation of respondents and their length of service; they also set up the defense that respondents were merely project employees, and were not terminated but that DMI's contract with its client was discontinued resulting in the absence of hauling projects for respondents.

If only to prove that they were not part of DMI, petitioners could have revealed who operated it, and from whom they derived the information embodied in their pleadings. Such failure to reveal thus gives the Court reasons to give credence to respondents' firm stand that petitioners are no strangers to DMI, and that they were the ones who managed and operated it.

Second, the declarations made by spouses Smith further bolster that petitioners and no other controlled DMI, to wit:

> Complainants [herein respondents] in their own motion admit that they never saw [spouses Smith] at the office of [DMI], and do not know them at all. This is because [spouses Smith's] services as lawyers had long been dispensed by the Spouses Lee and had no hand whatsoever in the management of the company. The Smiths, as counsel of the spouses at [that] time, [lent] their names as incorporators to facilitate the [incorporation of DMI.] Respondent Edgard Smith was then counsel of Toyota Alabang and acts as its corporate secretary and as favor to his former client and employer, Respondent Cesar Lee, agreed to help incorporate [DMI] and even asked his wife Respondent, Millicent Smith, to act as incorporator also [to] complete the required 5 man incorporators. After the incorporation they assigned and transferred all their purported participation in the company to the Respondents Spouses Cesar and Yolanda Lee, who acted as managers and are the real owners of the corporation. Even at the time complainant[s were] fired from [their] employment respondents Spouses Smith had already given up their shares. The failure to amend the Articles of Incorporation of [DMI], and to apply for closure is the fault of the new board, if any was constituted subsequently, and not of Respondents Smiths. Whatever fraud committed was not committed by the Respondents Smiths, hence they could not be made solidarily liable with Respondent Corporation or with the spouses Lee. If bad faith or fraud did attend the termination of complainant[s], respondents Smiths would know nothing of it because they had ceased any connection with [DMI] even prior to such time. And they had

at the inception of the corporation never exercised management prerogatives in the selection, hiring, and firing of employees of [DMI].[43]

Spouses Smith categorically identified petitioners as the owners and managers of DMI. In their Motion to Quash, however, petitioners neither denied the allegation of spouses Smith nor adduced evidence to establish that they were not the owners and managers of DMI. They simply insisted that they could not be held personally liable because of the immutability of the final and executory NLRC Decision, and of the separate and distinct personality of DMI.

Furthermore, the assailed CA Decision heavily relied on the declarations of spouses Smith but still petitioners did not address the matters raised by spouses Smith in the instant Petition with the Court.

Indeed, despite sufficient opportunity to clarify matters and/or to refute them, petitioners simply brushed aside the allegations of spouses Smith that petitioners owned and managed DMI. Petitioners just maintain that they did not act in bad faith; that the NLRC Decision is final and executory; and that DMI has a distinct and separate personality. Hence, for failure to address, clarify, or deny the declarations of spouses Smith, the Court finds respondents' position that petitioners owned, and operated DMI with merit.

Third, piercing the veil of corporate fiction is allowed, and responsible persons may be impleaded, and be held solidarily liable even after final judgment and on execution, provided that such persons deliberately used the corporate vehicle to unjustly evade the judgment obligation, or resorted to fraud, bad faith, or malice in evading their obligation.[44]

In this case, petitioners were impleaded from the inception of this case. They had ample opportunity to debunk the claim that they illegally dismissed respondents, and that they should

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[43] *Id.* at 99-100.

[44] *Guillermo v. Uson*, *supra* note 36.

be held personally liable for having controlled DMI and actively participated in its management, and for having used it to evade legal obligations to respondents.

While it is true that one's control does not by itself result in the disregard of corporate fiction; however, considering the irregularity in the incorporation of DMI, then there is sufficient basis to hold that such corporation was used for an illegal purpose, including evasion of legal duties to its employees, and as such, the piercing of the corporate veil is warranted. The act of hiding behind the cloak of corporate fiction will not be allowed in such situation where it is used to evade one's obligations, which "equitable piercing doctrine was formulated to address and prevent."[45]

Clearly, petitioners should be held liable for the judgment awards as they resorted to such scheme to countermand labor laws by causing the incorporation of DMI but without any indication that they were part thereof. While such device to defeat labor laws may be deemed ingenious and imaginative, the Court will not hesitate to draw the line, and protect the right of workers to security of tenure, including ensuring that they will receive the benefits they deserve when they fall victims of illegal dismissal.[46]

Finally, it appearing that respondents' reinstatement is no longer feasible by reason of the closure of DMI, then separation pay should be awarded to respondents instead.[47]

WHEREFORE, the Petition is **DENIED**. The July 1, 2013 Decision and November 13, 2013 Resolution of the Court of Appeals in CA-G.R. SP 113774 are **AFFIRMED with MODIFICATION** that instead of reinstatement, Dutch Movers,

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[45] See *Sarona v. National Labor Relations Commission*, 679 Phil. 394, 418-419 (2012).

[46] See *San Miguel Corporation v. National Labor Relations Commission*, 539 Phil. 236, 249-250 (2006).

[47] *Caliguia v. National Labor Relations Commission,* 332 Phil. 128, 142-143 (1996).

Inc. and spouses Cesar Lee and Yolanda Lee are solidarily liable to pay respondents' separation pay for every year of service.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

EN BANC

[G.R. No. 213948. April 25, 2017]

KNIGHTS OF RIZAL, *petitioner, vs.* **DMCI HOMES, INC., DMCI PROJECT DEVELOPERS, INC., CITY OF MANILA, NATIONAL COMMISSION FOR CULTURE AND THE ARTS, NATIONAL MUSEUM, and NATIONAL HISTORICAL COMMISSION OF THE PHILIPPINES**, *respondents.*

SYLLABUS

1. CIVIL LAW; THE CIVIL CODE OF THE PHILIPPINES; OBLIGATIONS AND CONTRACTS; CONTRACTS; ACTS NOT CONTRARY TO MORALS, GOOD CUSTOMS, PUBLIC ORDER, OR PUBLIC POLICY ARE ALLOWED IF ALSO NOT CONTRARY TO LAW; NO ALLEGATION OR PROOF THAT THE TORRE DE MANILA PROJECT IS "CONTRARY TO MORALS, CUSTOMS, AND PUBLIC ORDER" OR THAT IT BRINGS HARM, DANGER, OR HAZARD TO THE COMMUNITY.— In *Manila Electric Company v. Public Service Commission*, the Court held that **"what is not expressly or impliedly prohibited by law may be done, except when the act is contrary to morals, customs and public order."** This principle is fundamental in a democratic society, to protect the weak against the strong, the minority

against the majority, and the individual citizen against the government. In essence, this principle, which is the foundation of a civilized society under the rule of law, prescribes that the freedom to act can be curtailed only through law. Without this principle, the rights, freedoms, and civil liberties of citizens can be arbitrarily and whimsically trampled upon by the shifting passions of those who can shout the loudest, or those who can gather the biggest crowd or the most number of Internet trolls. In other instances, the Court has allowed or upheld actions that were not expressly prohibited by statutes when it determined that these acts were not contrary to morals, customs, and public order, or that upholding the same would lead to a more equitable solution to the controversy. However, it is the law itself — Articles 1306 and 1409(1) of the Civil Code — which prescribes that acts not contrary to morals, good customs, public order, or public policy are allowed if also not contrary to law. In this case, there is no allegation or proof that the Torre de Manila project is "contrary to morals, customs, and public order" or that it brings harm, danger, or hazard to the community. On the contrary, the City of Manila has determined that DMCI-PDI complied with the standards set under the pertinent laws and local ordinances to construct its Torre de Manila project.

2. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; ARTS AND CULTURE; NO LAW PROHIBITING THE CONSTRUCTION OF THE TORRE DE MANILA DUE TO ITS EFFECT ON THE BACKGROUND VIEW, VISTA, SIGHTLINE, OR SETTING OF THE RIZAL MONUMENT; SECTIONS 47 AND 48 OF ORDINANCE NO. 8119 CANNOT APPLY TO THE TORRE DE MANILA CONDOMINIUM PROJECT.— There is one fact that is crystal clear in this case. There is no law prohibiting the construction of the Torre de Manila due to its effect on the **background** "view, vista, sightline, or setting" of the Rizal Monument.Zoning, as well as land use, in the City of Manila is governed by Ordinance No. 8119. The ordinance provides for standards and guidelines to regulate development projects of historic sites and facilities within the City of Manila. x x x. Section 47 of Ordinance No. 8119 specifically regulates the "**development of historic sites and facilities**." Section 48 regulates **"large commercial signage and/or pylon."** There is nothing in Sections 47 and 48 of Ordinance No. 8119 that

disallows the construction of a **building outside the boundaries of a historic site or facility**, where such building may affect the background of a historic site. In this case, the Torre de Manila stands 870 meters outside and to the rear of the Rizal Monument and "cannot possibly obstruct the front view of the [Rizal] Monument." Likewise, the Torre de Manila is not in an area that has been declared as an "anthropological or archeological area" or in an area designated as a heritage zone, cultural property, historical landmark, or a national treasure by the NHCP.

3. ID.; ID.; ID.; ID.; SECTION 15, ARTICLE XIV OF THE CONSTITUTION IS NOT SELF-EXECUTORY; REPUBLIC ACT NO. 10066 OR THE NATIONAL CULTURAL HERITAGE ACT OF 2009 CANNOT APPLY TO THE TORRE DE MANILA CONDOMINIUM PROJECT, AS IT DOES NOT MENTION THAT ANOTHER PROJECT, BUILDING, OR PROPERTY, NOT ITSELF A HERITAGE PROPERTY OR BUILDING, MAY BE THE SUBJECT OF A CEASE AND DESIST ORDER WHEN IT ADVERSELY AFFECTS THE BACKGROUND VIEW, VISTA, OR SIGHTLINE OF A HERITAGE PROPERTY OR BUILDING.— Section 15, Article XIV of the Constitution, which deals with the subject of arts and culture, provides that "[t]he State shall conserve, promote and popularize the nation's historical and cultural heritage and resources x x x." Since this provision is not self-executory, Congress passed laws dealing with the preservation and conservation of our cultural heritage. One such law is Republic Act No. 10066, or the *National Cultural Heritage Act of 2009*, which empowers the National Commission for Culture and the Arts and other cultural agencies to issue a cease and desist order "when the **physical integrity** of the national cultural treasures or important cultural properties [is] found to be **in danger of destruction or significant alteration from its original state**." This law declares that the State should protect the "**physical integrity**" of the heritage property or building if there is "danger of destruction or significant alteration from its original state." **Physical integrity refers to the structure itself — how strong and sound the structure is.** The same law does not mention that **another** project, building, or property, not itself a heritage property or building, may be the subject of a cease

and desist order when it adversely affects the background view, vista, or sightline of a heritage property or building. Thus, Republic Act No. 10066 cannot apply to the Torre de Manila condominium project.

4. **ID.; ID.; ID.; BILL OF RIGHTS; DUE PROCESS OF LAW; THE DISPOSSESSION OF PROPERTY, OR THE STOPPAGE OF THE CONSTRUCTION OF A BUILDING IN ONE'S OWN PROPERTY, IS VIOLATIVE OF SUBSTANTIVE DUE PROCESS.—** The Constitution states that "[n]o person shall be deprived of life, liberty or property without due process of law x x x."It is a fundamental principle that no property shall be taken away from an individual without due process, whether substantive or procedural. The dispossession of property, or in this case the stoppage of the construction of a building in one's own property, would violate substantive due process.

5. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; ONLY ISSUES WHEN THERE IS A CLEAR LEGAL DUTY IMPOSED UPON THE OFFICE OR THE OFFICER SOUGHT TO BE COMPELLED TO PERFORM AN ACT, AND WHEN THE PARTY SEEKING *MANDAMUS* HAS A CLEAR LEGAL RIGHT TO THE PERFORMANCE OF SUCH ACT; *MANDAMUS* DOES NOT LIE AGAINST THE CITY OF MANILA AS IT HAS NO LEGAL DUTY TO CONSIDER THE STANDARDS UNDER ORDINANCE NO. 8119 TO THE TORRE DE MANILA PROJECT SINCE THESE STANDARDS ARE NOT APPLICABLE TO BUILDINGS OUTSIDE OF THE RIZAL PARK, AND THE TORRE DE MANILA IS OUTSIDE THE RIZAL PARK.—** The Rules on Civil Procedure are clear that mandamus only issues when there is a clear legal duty imposed upon the office or the officer sought to be compelled to perform an act, and when the party seeking mandamus has a clear legal right to the performance of such act. In the present case, nowhere is it found in Ordinance No. 8119 or in any law, ordinance, or rule for that matter, that the construction of a building **outside** the Rizal Park is prohibited if the building is within the background sightline or view of the Rizal Monument. Thus, there is no legal duty on the part of the City of Manila "**to consider**," "**the standards set under Ordinance No. 8119**" in relation to the applications of DMCI-

PDI for the Torre de Manila since under the ordinance **these standards can never be applied outside the boundaries of Rizal Park**. x x x. To compel the City of Manila to consider the standards under Ordinance No. 8119 to the Torre de Manila project will be an empty exercise since these standards cannot apply outside of the Rizal Park – and the Torre de Manila is outside the Rizal Park. Mandamus will lie only if the officials of the City of Manila have a ministerial duty to consider these standards to buildings outside of the Rizal Park. There can be no such ministerial duty because these standards are not applicable to buildings outside of the Rizal Park.

6. ID.; EVIDENCE; FINDINGS OF FACT; THE DETERMINATION OF WHETHER THE TORRE DE MANILA PROJECT PROPERLY COMPLIED WITH THE STANDARDS SET BY ORDINANCE NO. 8119 INVOLVES MAKING A FINDING OF FACT, WHICH FALLS WITHIN THE JURISDICTION OF THE REGIONAL TRIAL COURT.— [T]o declare that the City of Manila failed to consider the standards under Ordinance No. 8119 would involve making a finding of fact. A finding of fact requires notice, hearing, and the submission of evidence to ascertain compliance with the law or regulation. In such a case, it is the Regional Trial Court which has the jurisdiction to hear the case, receive evidence, make a proper finding of fact, and determine whether the Torre de Manila project properly complied with the standards set by the ordinance. In *Meralco Public Service Commission*, we held that it is the cardinal right of a party in trials and administrative proceedings to be heard, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof and to have such evidence presented considered by the proper court or tribunal.

7. ID.; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE CITY OF MANILA DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN ISSUING THE PERMITS AND LICENSES TO PRIVATE RESPONDENT.—The KOR also invokes this Court's exercise of its extraordinary *certiorari* power of review under Section 1, Article VIIIof the Constitution. However, this Court can only exercise its extraordinary *certiorari* power if the City of Manila, in issuing the required permits and licenses, **gravely abused its discretion amounting to lack or excess of jurisdiction**.

[N]either the majority nor minority opinion in this case has found that the City of Manila committed grave abuse of discretion in issuing the permits and licenses to DMCI-PDI. Thus, there is no justification at all for this Court to exercise its extraordinary *certiorari* power.

8. ID.; ID.; ID.; ID.; SPECIFIC VIOLATION OF A STATUTE THAT DOES NOT RAISE THE ISSUE OF CONSTITUTIONALITY OR VALIDITY OF THE STATUTE CANNOT BE THE SUBJECT OF THE COURT'S DIRECT EXERCISE OF ITS EXPANDED *CERTIORARI* POWER.—[T]he exercise of this Court's extraordinary *certiorari* power is limited to actual cases and controversies that necessarily involve a violation of the Constitution or the determination of the constitutionality or validity of a governmental act or issuance. Specific violation of a statute that does not raise the issue of constitutionality or validity of the statute cannot, as a rule, be the subject of the Court's direct exercise of its expanded *certiorari* power. Thus, the KOR's recourse lies with other judicial remedies or proceedings allowed under the Rules of Court.

9. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; SUPREME COURT; POWER OF JUDICIAL REVIEW; REQUISITES.— In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, we held that in cases where the question of constitutionality of a governmental action is raised, the judicial power that the courts exercise is likewise identified as the *power of judicial review* – the power to review the constitutionality of the actions of other branches of government. As a rule, as required by the *hierarchy of courts principle*, these cases are filed with the lowest court with jurisdiction over the subject matter. The judicial review that the courts undertake requires: 1) there be an actual case or controversy calling for the exercise of judicial power; 2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; 3) the question of constitutionality must be raised at the earliest possible opportunity; and 4) the issue of constitutionality must be the very *lis mota* of the case.

10. REMEDIAL LAW; EVIDENCE; FINDINGS OF FACT; ESTABLISHING FACTUAL MATTERS IS NOT WITHIN THE REALM OF THE COURT, AS THE FINDINGS OF FACT ARE THE PROVINCE OF THE TRIAL COURTS.— The lower court's decision under the constitutional scheme reaches the Supreme Court through the appeal process, through a petition for review on *certiorari* under Rule 45 of the Rules of Court. In the present case, the KOR elevated this case immediately to this Court in an original petition for injunction which we later on treated as one for mandamus under Rule 65. There is, however, no clear legal duty on the City of Manila to consider the provisions of Ordinance No. 8119 for applications for permits to build **outside** the protected areas of the Rizal Park. Even if there were such legal duty, the determination of whether the City of Manila failed to abide by this legal duty would involve factual matters which have not been admitted or established in this case. Establishing factual matters is not within the realm of this Court. Findings of fact are the province of the trial courts.

11. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; ARTS AND CULTURE; NO STANDARD IN ORDINANCE NO. 8119 FOR DEFINING OR DETERMINING THE BACKGROUND SIGHTLINE THAT IS SUPPOSED TO BE PROTECTED OR THAT IS PART OF THE PHYSICAL INTEGRITY OF THE RIZAL MONUMENT; THE COURT CANNOT APPLY A SUBJECTIVE AND NON-UNIFORM STANDARD THAT ADVERSELY AFFECTS PROPERTY RIGHTS SEVERAL KILOMETERS AWAY FROM A HISTORICAL SIGHT OR FACILITY.— There is no standard in Ordinance No. 8119 for defining or determining the background sightline that is supposed to be protected or that is part of the "physical integrity" of the Rizal Monument. How far should a building like the Torre de Manila be from the Rizal Monument — one, two, three, four, or five kilometers? Even the Solicitor General, during the Oral Arguments, conceded that the ordinance does not prescribe how sightline is determined, neither is there any way to measure by metes and bounds whether construction that is **not part of the historic monument itself or is outside the protected area** can be said to violate the Rizal Monument's **physical integrity**, except only to say "when you stand in front of the

Rizal Monument, there can be no doubt that your view is marred and impaired." This kind of a standard has no parameters and can include a sightline or a construction as far as the human eyes can see when standing in front of the Rizal Monument. Obviously, this Court cannot apply such a subjective and non-uniform standard that adversely affects property rights several kilometers away from a historical sight or facility.

12. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; THE POWER OF THE COURT IN *MANDAMUS* PETITIONS DOES NOT EXTEND TO DIRECT THE EXERCISE OF JUDGMENT OR DISCRETION IN A PARTICULAR WAY OR THE RETRACTION OR REVERSAL OF AN ACTION ALREADY TAKEN IN THE EXERCISE OF EITHER.— The Dissenting Opinion claims that "the City, by reason of a mistaken or erroneous construction of its own Ordinance, had failed to consider its duties under [Ordinance No. 8119] when it issued permits in DMCI-PDI's favor." However, MZBAA Zoning Board Resolution Nos. 06 and 06-A easily dispel this claim. According to the resolutions, the City of Manila, through the MZBAA, acted on DMCI-PDI's application for variance under the powers and standards set forth in Ordinance No. 8119.Without further proof that the MZBAA acted whimsically, capriciously, or arbitrarily in issuing said resolution, the Court should respect MZBAA's exercise of discretion. The Court cannot "substitute its judgment for that of said officials who are in a better position to consider and weigh the same in the light of the authority specifically vested in them by law." Since the Court has "no supervisory power over the proceedings and actions of the administrative departments of the government," it "should not generally interfere with purely administrative and discretionary functions." The power of the Court in mandamus petitions does not extend "**to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either**."

13. ID.; ID.; JUDGMENTS; THE DECISION OF THE COURT IN THE CASE AT BAR CANNOT BE *PRO HAC VICE* BECAUSE EVERY DECISION OF THE COURT FORMS PART OF THE LEGAL SYSTEM OF THE PHILIPPINES; IF ANOTHER CASE COMES UP WITH THE SAME

FACTS AS THE PRESENT CASE, THAT CASE MUST BE DECIDED IN THE SAME WAY AS THIS CASE TO COMPLY WITH THE CONSTITUTIONAL MANDATE OF EQUAL PROTECTION OF THE LAW.— *Pro hac vice* means a specific decision does not constitute a precedent because the decision is for the specific case only, not to be followed in other cases. A *pro hac vice* decision violates statutory law - Article 8 of the Civil Code - which states that "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines." The decision of the Court in this case cannot be *pro hac vice* because by mandate of the law **every decision** of the Court forms part of the legal system of the Philippines. If another case comes up with the same facts as the present case, that case must be decided in the same way as this case to comply with the constitutional mandate of equal protection of the law. Thus, a *pro hac vice* decision also violates the equal protection clause of the Constitution.

14. ID.; ID.; SPECIAL CIVIL ACTIONS; *MANDAMUS*; DOES NOT LIE AGAINST THE LEGISLATIVE AND EXECUTIVE BRANCHES OR THEIR MEMBERS ACTING IN THE EXERCISE OF THEIR OFFICIAL DISCRETIONARY FUNCTIONS.— It is the policy of the courts not to interfere with the discretionary executive acts of the executive branch unless there is a clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction. Mandamus does not lie against the legislative and executive branches or their members acting in the exercise of their official discretionary functions. This emanates from the respect accorded by the judiciary to said branches as co-equal entities under the principle of separation of powers. In *De Castro v. Salas*, we held that no rule of law is better established than the one that provides that mandamus will not issue to control the discretion of an officer or a court when honestly exercised and when such power and authority is not abused.

15. ID.; ID.; ID.; ID.; IN EXCEPTIONAL CASES, THE COURT HAS GRANTED A PRAYER FOR MANDAMUS TO COMPEL ACTION IN MATTERS INVOLVING JUDGMENT AND DISCRETION, ONLY "TO ACT, BUT NOT TO ACT ONE WAY OR THE OTHER," AND ONLY IN CASES WHERE THERE HAS BEEN A CLEAR

SHOWING OF GRAVE ABUSE OF DISCRETION, MANIFEST INJUSTICE, OR PALPABLE EXCESS OF AUTHORITY.— In exceptional cases, the Court has granted a prayer for mandamus to compel action in matters involving judgment and discretion, only "to act, but not to act one way or the other," and **only in cases where there has been a clear showing of grave abuse of discretion, manifest injustice, or palpable excess of authority**. In this case, there can be no determination by this Court that the City of Manila had been negligent or remiss in its duty under Ordinance No. 8119 considering that this determination will involve questions of fact. DMCI-PDI had been issued the proper permits and had secured all approvals and licenses months before the actual construction began. Even the KOR could not point to any law that respondent City of Manila had violated and could only point to declarations of policies by the NHCP and the Venice Charter which do not constitute clear legal bases for the issuance of a writ of mandamus.

16. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; ARTS AND CULTURE; THE PHILIPPINES IS NOT LEGALLY BOUND TO FOLLOW THE VENICE CHARTER AS IT IS NOT A TREATY AND THEREFORE DOES NOT BECOME ENFORCEABLE AS LAW. —The Venice Charter is merely a codification of guiding principles for the preservation and restoration of ancient monuments, sites, and buildings. It brings together principles in the field of historical conservation and restoration that have been developed, agreed upon, and laid down by experts over the years. Each country, however, remains "responsible for applying the plan within the framework of its own culture and traditions." The Venice Charter is not a treaty and therefore does not become enforceable as law. The Philippines is not legally bound to follow its directive, as in fact, these are not directives but mere guidelines – a set of the best practices and techniques that have been proven over the years to be the most effective in preserving and restoring historical monuments, sites and buildings.

17. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; GREAT CARE MUST BE TAKEN THAT THE COURT DOES NOT UNDULY

TREAD UPON THE LOCAL GOVERNMENT'S PERFORMANCE OF ITS DUTIES, FOR IT IS NOT FOR THE COURT TO DICTATE UPON THE OTHER BRANCHES OF THE GOVERNMENT HOW THEIR DISCRETION MUST BE EXERCISED SO LONG AS THESE BRANCHES DO NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.— The City of Manila concedes that DMCI-PDI's Zoning Permit was granted without going through the process under Ordinance No. 8119. However, the same was properly rectified when, faced with mounting opposition, DMCI-PDI itself sought clarification from the City of Manila and immediately began complying with the procedure for applying for a variance. The MZBAA did subsequently recommend the approval of the variance and the City Council of Manila approved the same, ratifying the licenses and permits already given to DMCI-PDI. Such ratification was well within the right of the City Council of Manila. The City Council of Manila could have denied the application had it seen any reason to do so. Again, the ratification is a function of the City Council of Manila, an exercise of its discretion and well within the authority granted it by law and the City's own Ordinance No. 8119. The main purpose of zoning is the protection of public safety, health, convenience, and welfare. There is no indication that the Torre de Manila project brings any harm, danger, or hazard to the people in the surrounding areas except that the building allegedly poses an unsightly view on the taking of photos or the visual appreciation of the Rizal Monument by locals and tourists. In fact, the Court must take the approval of the MZBAA, and its subsequent ratification by the City Council of Manila, as the duly authorized exercise of discretion by the city officials. Great care must be taken that the Court does not unduly tread upon the local government's performance of its duties. It is not for this Court to dictate upon the other branches of the government how their discretion must be exercised so long as these branches do not commit grave abuse of discretion amounting to lack or excess of jurisdiction.

18. ID.; ID.; ID.; ID.; NO BASIS TO ISSUE THE WRIT OF MANDAMUS AS THE CITY OF MANILA COULD NOT LEGALLY APPLY STANDARDS TO SITES OUTSIDE THE AREA COVERED BY THE ORDINANCE THAT

PRESCRIBED THE STANDARDS. — [A]ny violation of Ordinance No. 8119 must be determined in the proper case and before the proper forum. It is not within the power of this Court in this case to make such determination. Without such determination, this Court cannot simply declare that the City of Manila had failed to consider its duties under Ordinance No. 8119 when it issued the permits in DMCI-PDI's favor without making a finding of fact how the City of Manila failed "to consider" its duties with respect to areas outside the boundaries of the Rizal Park. In the first place, this Court has no jurisdiction to make findings of fact in an original action like this before this Court. Moreover, the City of Manila could not legally apply standards to sites outside the area covered by the ordinance that prescribed the standards. With this, taken in light of the lack of finding that there was grave abuse of discretion on the part of the City of Manila, there is no basis to issue the writ of mandamus against the City of Manila.

19. CIVIL LAW; THE CIVIL CODE OF THE PHILIPPINES; ESTOPPEL; A LITIGANT MAY BE DENIED RELIEF BY A COURT OF EQUITY ON THE GROUND THAT HIS CONDUCT HAS BEEN INEQUITABLE, UNFAIR AND DISHONEST, OR FRAUDULENT, OR DECEITFUL AS TO THE CONTROVERSY IN ISSUE; PETITIONER IS ESTOPPED FROM QUESTIONING THE TORRE DE MANILA CONSTRUCTION.— It is a basic principle that "one who seeks equity and justice must come to court with clean hands." In *Jenosa v. Delariarte*, the Court reiterated that he who seeks equity must do equity, and he who comes into equity must come with clean hands. This "signifies that a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent, or deceitful as to the controversy in issue." Thus, the KOR, having earlier proposed a national theater a mere 286 meters in distance from the back of the Rizal Monument that would have dwarfed the Rizal Monument, comes to this Court with unclean hands. It is now precluded from "seeking any equitable refuge" from the Court. The KOR's petition should be dismissed on this ground alone.

20. ID.; ID.; NUISANCE; DEFINED; NUISANCE *PER SE* AND NUISANCE *PER ACCIDENS,* DISTINGUISHED.— Article 694 of the Civil Code defines a **nuisance** as any act, omission, establishment, business, condition of property, or anything else

which: (1) injures or endangers the health or safety of others; (2) annoys or offends the senses; (3) shocks, defies or disregards decency or morality; (4) obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) hinders or impairs the use of property. The Court recognizes two kinds of nuisances. The first, nuisance *per se*, is one "recognized as a nuisance under any and all circumstances, because it constitutes a direct menace to public health or safety, and, for that reason, may be abated summarily under the undefined law of necessity." The second, nuisance *per accidens*, is that which "depends upon certain conditions and circumstances, and its existence being a question of fact, it cannot be abated without due hearing thereon in a tribunal authorized to decide whether such a thing in law constitutes a nuisance."

21. ID.; ID.; ID.; THE TORRE DE MANILA PROJECT IS NOT A NUISANCE *PER SE,* AS IT CANNOT BE CONSIDERED AS A DIRECT MENACE TO PUBLIC HEALTH OR SAFETY.— It can easily be gleaned that the Torre de Manila is not a nuisance *per se*. The Torre de Manila project cannot be considered as a "direct menace to public health or safety." Not only is a condominium project commonplace in the City of Manila, DMCI-PDI has, according to the proper government agencies, complied with health and safety standards set by law. Later, DMCI-PDI also obtained the right to build under a variance recommended by the MZBAA and granted by the City Council of Manila. Thus, there can be no doubt that the Torre de Manila project is not a nuisance *per se*.

22. ID.; ID.; ID.; NUISANCE *PER ACCIDENS* IS DETERMINED BASED ON ITS SURROUNDING CONDITIONS AND CIRCUMSTANCES WHICH MUST BE WELL ESTABLISHED, NOT MERELY ALLEGED; THE QUESTION OF WHETHER THE TORRE DE MANILA PROJECT IS A NUISANCE *PER ACCIDENS* IS A QUESTION OF FACT WHICH MUST BE SETTLED AFTER DUE PROCEEDINGS BROUGHT BEFORE THE PROPER REGIONAL TRIAL COURT.— By definition, a nuisance *per accidens* is determined based on its surrounding conditions and circumstances. These conditions and circumstances must be well established, not merely alleged. The Court cannot simply accept these conditions and

circumstances as established facts as the KOR would have us do in this case. The KOR itself concedes that the question of whether the Torre de Manila is a nuisance *per accidens* is a question of fact. The authority to decide when a nuisance exists is an authority to find facts, to estimate their force, and to apply rules of law to the case thus made.This Court is no such authority. It is not a trier of facts. It cannot simply take the allegations in the petition and accept these as facts, more so in this case where these allegations are contested by the respondents. The task to receive and evaluate evidence is lodged with the trial courts. The question, then, of whether the Torre de Manila project is a nuisance *per accidens* must be settled after due proceedings brought before the proper Regional Trial Court. The KOR cannot circumvent the process in the guise of protecting national culture and heritage.

23. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTION; MANDAMUS; THE PETITION FOR MANDAMUS MUST BE DISMISSED AND THE TEMPORARY RESTRAINING ORDER LIFTED WHERE THE LEGAL RIGHTS OF THE PETITIONER ARE NOT WELL-DEFINED, CLEAR, AND CERTAIN AS THE WRIT OF MANDAMUS NEVER ISSUES IN DOUBTFUL CASES.— Injunctive reliefs are meant to preserve substantive rights and prevent further injury until final adjudication on the merits of the case. In the present case, since the legal rights of the KOR are not well-defined, clear, and certain, the petition for mandamus must be dismissed and the TRO lifted.The general rule is that courts will not disturb the findings of administrative agencies when they are supported by substantial evidence. In this case, DMCI-PDI already acquired vested rights in the various permits, licenses, or even variances it had applied for in order to build a 49-storey building which is, and had been, allowed by the City of Manila's zoning ordinance.As we have time and again held, courts generally hesitate to review discretionary decisions or actions of administrative agencies in the absence of proof that such decisions or actions were arrived at with grave abuse of discretion amounting to lack or excess of jurisdiction. In *JRS Business Corp. v. Montesa*, we held that mandamus is the proper remedy if it could be shown that there was neglect on the part of a tribunal in the performance of an act which the law specifically enjoins as a duty, or there was an unlawful exclusion of a party from the use and enjoyment

of a right to which he is clearly entitled. Only specific legal rights may be enforced by mandamus if they are clear and certain. If the legal rights of the petitioner are not well-defined, definite, clear, and certain, the petition must be dismissed. Stated otherwise, the writ never issues in doubtful cases. It neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.

VELASCO, JR., *J.*, *concurring opinion*:

1. CIVIL LAW; THE CIVIL CODE OF THE PHILIPPINES; PROPERTY AND OWNERSHIP; VIEW OF DOMINANCE; A LAW THAT PURPORTS TO PROTECT THE VIEW OF DOMINANCE OF A PARTICULAR PROPERTY, SUCH AS A HISTORICAL SITE OR FACILITY, MUST NECESSARILY BE A LAW THAT EITHER PROHIBITS THE CONSTRUCTION OF BUILDINGS AND OTHER STRUCTURES WITHIN A CERTAIN AREA OUTSIDE OF THE PREMISES OF THE SITE OR FACILITY OR PRESCRIBES SPECIFIC LIMITATIONS ON ANY SUCH CONSTRUCTION.—The view of dominance of a property, at least for purposes of the dispute at hand, refers to a characteristic of a property that permits it to be viewed as the *sole* or *most prominent* element *vis-a-vis* its background. This is the attribute of the Rizal Monument that was supposedly impaired by the construction of the *Torre de Manila*, per the proponents of the first argument. An inviolable view of dominance is not an inherent attribute of any kind of property — not even of our monuments and national shrines. To merit inviolability, there must be a law that guarantees and protects it. A law that purports to protect the view of dominance of a particular property, such as a historical site or facility, must necessarily be a law that either ***prohibits*** the construction of buildings and other structures within a certain area *outside* of the premises of the site or facility or ***prescribes specific limitations*** on any such construction. Without such express prohibition or limitation, there can be no effective assurance that the view of dominance of a historical site or facility would not be impaired. The nature of a law protecting a view of dominance, therefore, is similar to one that establishes an easement; it imposes a burden (in this case, a building prohibition or restriction) upon certain properties so as to ensure that the

prominent view of another property in relation to its background remains unimpaired.

2. ID.; ID.; ID.; ID.; SECTION 47 OF ORDINANCE NO. 8119 ONLY APPLIES TO DEVELOPMENT PROJECTS THAT ARE IMPLEMENTED WITHIN THE HISTORICAL SITES OR FACILITIES AND IT DOES NOT PROVIDE ANY PROTECTION OR GUARANTEE TO THE VIEW OF DOMINANCE OF SUCH SITES AND FACILITIES; THUS THE STANDARDS UNDER SECTION 47 COULD NOT BE INVOKED SO AS TO PROHIBIT A BUILDING-STANDING ON PRIVATE LAND AND WITHOUT THE PREMISES OF A HISTORICAL SITE OR FACILITY-FROM RISING AND BECOMING VISIBLE IN THE BACKGROUND OF SUCH SITE OR FACILITY.— Section 47 of Ordinance No. 8119, true enough, enumerates standards that aim to protect Manila's historical sites and facilities from impairment. Those standards, however, do not extend protection to the view of dominance of such sites and facilities. A reading of Section 47 reveals that the standards enumerated thereunder only apply to construction projects involving the "*development of historic sites and facilities*" themselves x x x. The clear import x x x is that Section 47 only applies to development projects that are implemented *within* the historical sites or facilities. The section, in other words, has absolutely no application to projects that are constructed outside of such site or facility. Since Section 47 does not regulate, much less prohibit, construction projects that surrounds the city's historical sites and facilities, it cannot be said that the said section provides any protection or guarantee to the view of dominance of such sites and facilities. The standards under Section 47 could not be invoked so as to prohibit a building-standing on private land and without the premises of a historical site or facility-from rising and becoming visible in the background of such site or facility. Hence, even assuming that the Rizal Monument is a historical site or facility in contemplation of Ordinance No. 8119, it is manifest that none of the standards under Section 47-much less those pointed out by the minority-can conceivably apply to the case of the DMCI-PDI and the *Torre de Manila*.

3. ID.; ID.; ID.; ID.; SECTION 48 OF ORDINANCE NO. 8119 DOES NOT PRESCRIBE ANY CONCRETE BUILDING PROHIBITION OR RESTRICTION ON CONSTRUCTION

PROJECTS THAT ARE SPECIALLY GEARED TOWARDS THE PRESERVATION OF THE VIEW OF DOMINANCE OF PROPERTIES OR NEIGHBORHOODS ADJACENT THERETO; THUS THE STANDARDS UNDER SECTION 48 ARE MERE GENERAL NORMS THAT, PER SE, ARE INSUFFICIENT TO GUARANTEE SUCH VIEW.— Section 48 of Ordinance No. 8119, on the other hand, enumerates standards that aim to protect the character, environmental limitation, convenience and safety of properties and neighborhoods that are adjacent to a construction project. The section, by its terms, is meant to have universal application, *i.e.*, its standards apply to all construction projects within the city (such as the *Torre de Manila*) and are intended to protect any kind of properties or neighborhoods adjacent thereto (such as the Rizal Monument). Be that as it may, Section 48 does not prescribe any concrete building prohibition or restriction on construction projects that are specially geared towards the preservation of the view of dominance of properties or neighborhoods adjacent thereto. The standards under Section 48 that were invoked by the majority are mere ***general*** norms that, *per se*, are insufficient to guarantee such view. The said standards do not establish operable norms by themselves and so, to gain substance, should be read with other provisions of the ordinance or of other laws. x x x. None of the standards under Section 48 of Ordinance No. 8119 may be considered as protective of the view of dominance of any of property within the city, much less of the Rizal Monument.

4. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; MANDAMUS; DOES NOT LIE TO COMPEL THE CITY OF MANILA TO RE-EVALUATE THE PERMITS OF PRIVATE RESPONDENT, AS NONE OF THE STANDARDS UNDER SECTIONS 47 AND 48 OF ORDINANCE NO. 8119 ACTUALLY EXTENDS PROTECTION TO THE VIEW OF DOMINANCE OF ANY PROPERTY WITHIN MANILA; THUS IT CANNOT BE SAID THAT THE CITY OF MANILA HAD OVERLOOKED, MISINTERPRETED OR MISAPPLIED ANY PERTINENT STANDARDS WHEN IT ISSUED THE PERMITS.— The underlying purpose of the re-evaluation was to allow the City of Manila to determine, in essence, the following: (a) whether the Rizal Monument and Park is a

historical site or facility in contemplation of Ordinance No. 8119, (b) whether the abovementioned standards in Sections 47 and 48 apply to the DMCI-PDI and the *Torre de Manila* building and, if so, (c) whether DMCI--PDI, in erecting the said building, had breached or impaired any of such standards. [N]one of the standards under Sections 47 and 48 of Ordinance No. 8119 actually extends protection to the view of dominance of any property within Manila. It cannot be said, therefore, that the City of Manila had overlooked, misinterpreted or misapplied any pertinent standards when it issued the permits to DMCI-PDI. The need for a re-evaluation is thereby also negated as the possibility that the same would yield an outcome different from the original evaluation is but reduced to nil. Hence, the directive compelling the City of Manila to re-evaluate the permits of DMCI-PDI must fail. A re-evaluation will only waste resources, further delay the final resolution of the case and defeat the very purpose why we took cognizance of the petition in the first place. The compulsion of such an act is certainly not the office of the writ of *mandamus*.

5. **POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; SUPREME COURT; POWER OF JUDICIAL REVIEW; THERE IS NO BONA FIDE LEGAL DISPUTE IN THE CASE AT BAR AS THERE IS NO LAW PROTECTING THE VIEW OF DOMINANCE OF THE RIZAL MONUMENT.—** The absence of law protecting the view of dominance of the Rizal Monument strips the first argument of any semblance it might have first had as a *bona fide* legal dispute. Without the backing of law, the only query the argument actually brings to the fore is whether the Rizal Monument is still pleasing to look at or to take picture of in light of the *Torre de Manila*looming in its background. [T]hat is not a question that the Court may dabble into, much less settle in the exercise of its judicial power.

6. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; MANDAMUS; A WRIT OF *MANDAMUS* ONLY LIES IN THE ENFORCEMENT OF A CLEAR LEGAL RIGHT ON THE PART OF THE PETITIONER AND IN THE COMPULSION OF A CLEAR LEGAL DUTY ON THE PART OF THE RESPONDENT; PETITIONER IS NOT ENTITIED TO THE WRIT OF MANDAMUS AS THERE IS NO COMPELLABLE DUTY ON THE PART OF ANY**

OF THE RESPONDENTS TO STOP OR PROHIBIT THE CONSTRUCTION OF THE *TORRE DE MANILA* BUILDING OR TO OTHERWISE DESTROY SO MUCH OF THE SAID BUILDING ALREADY CONSTRUCTED.— It has been said that a writ of *mandamus* only lies in the enforcement of a clear legal right on the part of the petitioner and in the compulsion of a clear legal duty on the part of the respondent. Here, it has been established that there is no law, whether national or local, that protects the view of dominance of the Rizal Monument or prohibits DMCI-PDI from constructing in its land a building such as the *Torre de Manila*. The conclusion x x x petitioner is not entitled to the writ inasmuch as there is no compellable duty on the part of any of the respondents to stop or prohibit the construction of the *Torre de Manila* building or to otherwise destroy so much of the said building already constructed.

PERLAS-BERNABE, *J.*, *separate concurring opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; DEFINED.— "*Mandamus* is defined as a writ commanding a tribunal, corporation, board or person to do the act required to be done when it or he unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office or which such other is entitled, there being no other plain, speedy, and adequate remedy in the ordinary course of law."

2. ID.; ID.; ID.; ID.; WILL ISSUE ONLY WHEN THE PETITIONER HAS A CLEAR LEGAL RIGHT TO THE PERFORMANCE OF THE ACT SOUGHT TO BE COMPELLED AND THE RESPONDENT HAS AN IMPERATIVE DUTY TO PERFORM THE SAME; THE CLARITY AND COMPLETENESS OF PETITIONER'S LEGAL RIGHT TO STOP THE CONSTRUCTION OF THE TORRE DE MANILA REMAINS SUSPECT IN VIEW OF THE PRESENT LACK OF ESTABLISHED AND BINDING LEGAL STANDARDS ON THE PROTECTION OF SIGHTLINES AND VISTAS OF HISTORICAL MONUMENTS, AS WELL AS HERITAGE SITES AND/

OR AREAS.— Section 3, Rule 65 of the Rules of Court lays down under what circumstances a petition for *mandamus* may be filed: x x x. Based on jurisprudence, the peremptory writ of *mandamus* is characterized as "an extraordinary remedy that is issued only in extreme necessity, and [because] the ordinary course of procedure is powerless to afford an adequate and speedy relief to one who has a clear legal right to the performance of the act to be compelled." Thus, it is a basic principle that **"[a] writ of *mandamus* can be issued only when petitioner's legal right to the performance of a particular act which is sought to be compelled is clear and complete. A clear legal right is a right which is indubitably granted by law or is inferable as a matter of law."** Stated otherwise, **"*mandamus will issue only when the petitioner has a clear legal right to the performance of the act sought to be compelled and the respondent has an imperative duty to perform the same*."** x x x. In this case, the clarity and completeness of petitioner's legal right to the compulsion prayed for — *i.e.*, to stop the construction of the Torre de Manila — remains suspect in view of **the present lack of established and binding legal standards on the protection of sightlines and vistas of historical monuments, as well as heritage sites and/or areas**.

3. ID.; ID.; ID.; ID.; LIES ONLY TO COMPEL THE PERFORMANCE OF A MINISTERIAL DUTY; MINISTERIAL DISTINGUISHED FROM DISCRETIONARY DUTY. — [I]t is fundamental that "**[t]he remedy of *mandamus* lies [only] to compel the performance of a ministerial duty**. A purely ministerial act or duty is one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, **without regard to or the exercise of its own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial**."

4. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; ARTS AND CULTURE; SECTIONS 15 AND 16 OF ARTICLE XIV ARE NOT SELF-EXECUTING PROVISIONS.— [P]etitioner cites Sections 15 and 16, Article XIV of the 1987 Constitution as basis for the relief prayed for. However, it is quite apparent that these are not self-executing

provisions; thus, Congress must first enact a law that would provide guidelines for the regulation of heritage conservation, as well as the penalties for violations thereof. Otherwise stated, there is a need for supplementary statutory implementation to give effect to these provisions.

5. ID.; ID.; ID.; THERE IS NO LAW WHICH SPECIFICALLY PROHIBITS THE CONSTRUCTION OF ANY STRUCTURE THAT MAY OBSTRUCT THE SIGHTLINE, SETTING, OR BACKDROP OF A HISTORICAL OR CULTURAL HERITAGE OR RESOURCE; THE NATIONAL HISTORICAL COMMISSION OF THE PHILIPPINES (NHCP) GUIDELINES IS NEITHER A LAW NOR AN ENFORCEABLE RULE OR REGULATION, AND THE GUIDELINES STATED IN THE VENICE CHARTER HAVE NO BINDING EFFECT IN OUR JURISDICTION.— [T]here is currently no such law which specifically prohibits the construction of any structure that may obstruct the sightline, setting, or backdrop of a historical or cultural heritage or resource. This prohibition is neither explicit nor deducible from any of the statutory laws discussed in the present petition. There are several laws which consistently reiterate the State's policy to protect and conserve the nation's historical and cultural heritage and resources. However, none of them adequately map out the boundaries of protection and/or conservation, at least to the extent of providing this Court with a reasonable impression that sightlines, vistas, and the like of historical monuments are indeed covered by compulsive limitations. The closest to a statutory regulation of this kind would appear to be Section 25 of Republic Act No. (RA) 10066 x x x. However, it is unclear whether "physical integrity," as used in this provision, covers sightlines, vistas, settings, and backdrops. The concept of "physical integrity" is glaringly undefined in the law, and in fact x x x the reasonable inference is that "physical integrity [equates] to the structure itself - how strong and sound it is." For another, petitioner claims that the Torre de Manila project violates the National Historical Commission of the Philippines (NHCP) Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages, as well as the International Charter for the Conservation and Restoration of Monuments and Sites, otherwise known as the Venice Charter. However, the NHCP Guidelines is neither a law nor

an enforceable rule or regulation, considering the lack of showing that the requirements of publication and filing with the Law Center of the University of the Philippines were complied with. [T]he Venice Charter is not a treaty but "merely a codification of guiding principles for preservation and restoration of ancient monuments, sites[,] and buildings[,]" which, however, defers to each country the "responsib[ility] for applying the plan within the framework of its own culture and traditions." Hence, the guidelines stated therein have no binding effect in this jurisdiction.

6. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; WHILE MANILA ORDINANCE NO. 8119 IS A BINDING REGULATION WHICH NOT MERELY SETS FORTH A TENTATIVE DIRECTION OR INSTRUCTION FOR PROPERTY DEVELOPMENT WITHIN THE CITY, NONE OF ITS PROVISIONS JUSTIFY THE ISSUANCE OF A WRIT OF *MANDAMUS* IN FAVOR OF PETITIONER.— Neither can **Manila Ordinance No. 8119** be considered as an existing local legislation that provides a clear and specific duty on the part of respondent City of Manila (the City of Manila) to regulate development projects insofar as these may adversely affect the view, vista, sightline or setting of a cultural property within the city. While x x x this ordinance [is] a binding regulation which not merely sets forth a tentative direction or instruction for property development within the city, x x x none of its provisions justify the issuance of a writ of *mandamus* in favor of petitioner.

7. POLITICAL LAW; LOCAL GOVERNMENT CODE; ZONING ORDINANCE; SECTIONS 45, 47, 48 AND 53 OF MANILA ORDINANCE NO. 8119 ARE NOT APPLICABLE TO THE CASE AT BAR.— Sections 45 and 53 of Ordinance No. 8119 respectively pertain to environmental conservation and protection standards, and the requirement of Environmental Compliance Certificates, and thus, are only relevant when there is an alleged violation of an environmental law affecting the natural resources within the City's premises x xx. In this case, the Rizal Monument is not claimed to be a natural resource whose view should be preserved in accordance with Section 45 (1) above. Neither was it claimed that the Torre de Manila project is covered by and/or has breached the ECC requirement under Section 53.

Therefore, none of these provisions should apply to this case. In the same vein, **Section 48** of Ordinance No. 8119 provides for site performance standards, which, among others, only require that developments within the City be designed in a safe, efficient, and **aesthetically pleasing manner**: x xx. It is not inferable whether the "aesthetics" requirement under this provision precludes any form of obstruction on the sightline and vista of any historical monument within the City. It also does not account for a situation where the assailed development and historical monument are located in different cluster zones. x x x. **Section 47** of Ordinance No. 8119, which enumerates several historical preservation and conservation standards, was supposedly not considered by the City of Manila when it allowed the construction of the Torre de Manila x x x. However, the fact that Section 47 speaks of the preservation of existing landscape and streetscape qualities (Section 47, paragraph 2 [7]), or conveys a mandate to local utility companies not to detract from the visual character of heritage resources (Section 47, paragraph 2 [9]) should not be enough for this Court to conclude that Ordinance No. 8119 imposes a prohibition against the obstruction of sightlines and vistas of a claimed heritage property via the construction of buildings at a particular distance therefrom. The operable norms and standards of protecting vistas and sightlines are not only undefined; it is also doubtful whether or not the phrases "landscape or streetscape qualities" and "visual character of heritage resources" as used in the provision even include the aspects of vistas and sightlines, which connote regulation **beyond the boundaries of a heritage site, building or place**, as in this case.

8. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; EMPLOYED TO COMPEL THE PERFORMANCE, WHEN REFUSED, OF A MINISTERIAL DUTY, THIS BEING ITS CHIEF USE AND NOT A DISCRETIONARY DUTY; NONETHELESS, IT IS LIKEWISE AVAILABLE TO COMPEL ACTION, WHEN REFUSED, IN MATTERS INVOLVING JUDGMENT AND DISCRETION, BUT NOT TO DIRECT THE EXERCISE OF JUDGMENT OR DISCRETION IN A PARTICULAR WAY OR THE RETRACTION OR REVERSAL OF AN ACTION ALREADY TAKEN IN THE EXERCISE OF EITHER.— [S]ection 60 of Ordinance No. 8119 governs the

grant of variances from the prescribed Land Use Intensity Control (LUIC) standards (among others, the Floor Area Ratio [FAR]) on buildings within a specific zone x x x. In this case, the City of Manila had already exercised its discretion to grant a variance in favor of DMCI-PDI's Torre de Manila project. The factors taken into account by the City of Manila in the exercise of such discretion are beyond the ambit of a *mandamus* petition. As above-mentioned, **"[t]he remedy of *mandamus* lies [only] to compel the performance of a ministerial duty"** which is "one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, **without regard to or the exercise of its own judgment upon the propriety or impropriety of the act done**." It is settled that "[*m*]*andamus* is employed to compel the performance, when refused, of a ministerial duty, this being its chief use and not a discretionary duty. It is nonetheless likewise available to compel action, when refused, in matters involving judgment and discretion, **but not to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either**." Further, while it has not been shown whether the conditions stated in Section 60 were complied with, it remains unclear whether or not these provisions can be — as it has been previously been — suspended due to justifiable reasons. What remains undisputed is the fact that DMCI-PDI applied for a variance, which application, upon due deliberation of the City's MZBAA, has been granted. Again, whether proper or not, the fact remains that discretion has already been exercised by the City of Manila. Thus, *mandamus* is not the appropriate remedy to enjoin compliance with the provisions on variance.

9. ID.; ID.; ID.; ID.; A *MANDAMUS* PETITION TO COMPEL THE STOPPAGE OF THE TORRE DE MANILA PROJECT, NOT GRANTED; THE COURT'S FUNCTION AS JUDGES IS TO INTERPRET THE LAW, AND NOT TO CONJURE LEGAL NICETIES FROM GENERAL POLICIES YET UNDEFINED BY LEGISLATURE.— [T]here is no discernible reference from our existing body of laws from which we can gather any legal regulation on a heritage property's vista and sightline. After a careful study of this case, it is [the] conclusion that the realm of setting preservation is a new frontier of law that is yet to be charted by our lawmakers.

It is therefore a political question left for Congress and not for this Court to presently decide. Verily, our function as judges is to interpret the law; it is not for us to conjure legal niceties from general policies yet undefined by legislature. Until such time that our legal system evolves on this subject, x x x this Court is unprepared to grant a *mandamus* petition to compel the stoppage of the Torre De Manila project simply on the premise that the Torre de Manila "visually obstructs the vista and adds an unattractive sight to what was once a lovely public image."

LEONEN, *J.*, *concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; SUPREME COURT; POWER OF JUDICIAL REVIEW; REQUISITES.— For this Court to exercise its power of judicial review, four (4) requisites must be satisfied. First, there must exist "an actual and appropriate case." Second, the party bringing suit must have a "personal and substantial interest . . . in raising the constitutional question." Third, "the exercise of judicial review is pleaded at the earliest opportunity." Lastly, "the constitutional question is the *lis mota* of the case." The second requisite is absent in this case.

2. ID.; ID.; ID.; ID.; ID.; ID.; REQUIREMENT OF LEGAL STANDING; THE PARTY BRINGING SUIT HAS SUSTAINED OR WILL SUSTAIN DIRECT INJURY AS A RESULT OF THE GOVERNMENTAL ACT THAT IS BEING CHALLENGED; EXCEPTIONS.— Legal standing requires that the party bringing suit has "sustained or will sustain direct injury as a result of the governmental act that is being challenged." There must be "a personal stake in the outcome of the controversy" on the part of the petitioner so as not to unnecessarily impede the judicial process. "For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice." There are exceptions to the rule on standing. Non-traditional suitors — taxpayers, voters, concerned citizens, and legislators — have been granted standing to question the constitutionality of governmental acts. The "transcendental importance" of the issues raised is often cited as basis for granting standing.

3. ID.; ID.; ID.; ID.; ID.; PETITIONER KNIGHTS OF RIZAL HAS NO LEGAL STANDING TO FILE THE CASE AS THERE WAS NO SHOWING OF A DIRECT INJURY TO IT OR A SPECIFIC MEMBER THEREOF CAUSED BY THE CONSTRUCTION OF TORRE DE MANILA, AND FOR HAVING NO DIRECT AND PERSONAL INTEREST IN THE CASE.— Petitioner Knights of Rizal anchors its legal standing on its charter, Republic Act No. 646, Section 2 x x x. Petitioner further cites as basis Section 7 of Republic No. 7356 or the Law Creating the National Commission for Culture and the Arts x x x. However, like any other corporation, petitioner Knights of Rizal may only exercise its corporate powers, specifically, its power to sue, through its Board of Directors. There must be a duly issued Secretary's Certificate attached to the petition stating that the corporation's board allowed the filing of the suit in behalf of the corporation. Here, the Secretary's Certificate was not duly accomplished. x x x. Moreover, there was no showing of a direct injury to petitioner or a specific member of Knights of Rizal caused by the construction of Torre de Manila. "[Losing] its moral authority and capacity 'to inculcate and propagate... [the teaching of] Dr. Jose Rizal'" is too general and vague an interest to grant Knights of Rizal legal standing to sue. Further, Knights of Rizal is not a *citizen* with the duty to preserve and conserve historical and cultural heritage. x x x. With petitioner Knights of Rizal having no direct and personal interest in this case, it has no legal standing. On this ground alone, this Petition should have been dismissed outright.

4. ID.; ID.; ID.; ID.; ID.; THE SUPREME COURT AND THE REGIONAL TRIAL COURTS SHARE CONCURRENT ORIGINAL JURISDICTION OVER ISSUES INVOLVING CONSTITUTIONAL QUESTIONS. — The liberality in granting legal standing to those who have none should be tempered especially when the party suing is a corporation, the composition and nature of which inherently make the determination of *direct* and *personal* interest difficult. This is especially true in cases involving alleged violations of provisions under the Bill of Rights, which primarily involves "fundamental *individual* rights." The constitutional issue raised here is indeed novel. This Court has yet to decide on the extent of protection the State has to afford to our nation's historical and cultural heritage and resources, specifically, whether a declared national cultural treasure's sightlines and settings are

part of its physical integrity. Nevertheless, novelty, in it itself, does not equate to the transcendental importance of the issues involved. Constitutional issues, however novel, may likewise be resolved by regional trial courts at the first instance. Regional trial courts and this Court share concurrent original jurisdiction over issues involving constitutional questions.

5. REMEDIAL LAW; CIVIL PROCEDURE; COURTS; DOCTRINE OF HIERARCHY OF COURTS; RECOURSE MUST FIRST BE OBTAINED FROM LOWER COURTS SHARING CONCURRENT JURISDICTION WITH A HIGHER COURT; CLARIFIED.— [F]actual issues were raised in this Petition. This Court, not being a trier of facts, the Petition should have been filed before the regional trial court. This is also consistent with the doctrine of hierarchy of courts. Recourse must first be obtained from lower courts sharing concurrent jurisdiction with a higher court. Clarifying this concept in *Diocese of Bacolod v. Commission on Elections*, we said: The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.

6. ID.; ID.; PROVISIONAL REMEDY; INJUNCTION; THE SUPREME COURT HAS NO JURISDICTION OVER ACTIONS FOR INJUNCTION, AS SUCH ACTIONS HAVE SUBJECT MATTERS INCAPABLE OF

PECUNIARY ESTIMATION, AND THUS FALL UNDER THE EXCLUSIVE ORIGINAL JURISDICTION OF REGIONAL TRIAL COURTS.— This Court also has no subject matter jurisdiction over this case. Jurisdiction over the subject matter is the "power to hear and determine cases of the general class to which the proceedings in question belong." For this Court, its subject matter jurisdiction is provided in the first paragraph of Section 5 of Article VIII of the Constitution: SECTION 5. The Supreme Court shall have the following powers: (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*. As for cases for injunction such as that originally filed by petitioner Knights of Rizal, this Court has no jurisdiction. Actions for injunction have subject matters incapable of pecuniary estimation. Therefore, such actions are under the exclusive original jurisdiction of regional trial courts. Actions for injunction cannot be commenced before any other court.

7. ID.; ID.; COURTS; JURISDICTION; SUBJECT MATTER JURISDICTION CANNOT BE CONFERRED BY THE ACQUIESCENCE OF THE COURTS; THUS, A COURT MUST NOT CHANGE THE RELIEF AND REMEDY TO ACCOMMODATE A PETITION OVER WHICH IT HAS NO SUBJECT MATTER JURISDICTION THE SAME WAY THAT PARTIES CANNOT CHOOSE, CONSENT TO, OR AGREE AS TO WHICH COURT OR TRIBUNAL SHOULD DECIDE THEIR DISPUTES.— The present Petition was converted into *mandamus* as a matter of "[relaxing] procedural rules." The dissent cites as legal bases *Gamboa v. Teves*, *Salvacion v. Central Bank of the Philippines*, and *Alliance of Government Workers v. Minister of Labor and Employment* where the petitions, as originally filed, were for declaratory relief. Despite lack of jurisdiction to take cognizance of the petitions, this Court resolved the purely legal questions involved in *Gamboa, Salvacion*, and *Alliance of Government Workers* because of the issues' alleged "far-reaching implications." *Gamboa, Salvacion*, and *Alliance of Government Workers* should be the exception rather than the rule. Subject matter jurisdiction is a matter of law. It cannot be "conferred by the acquiescence of the courts." A court must not change

the relief and remedy to accommodate a petition over which it has no subject matter jurisdiction the same way that parties cannot choose, consent to, or agree as to which court or tribunal should decide their disputes. Accommodating a petition which, on its face, this Court cannot resolve for lack of jurisdiction, undermines the impartiality and independence of this Court. It ultimately erodes the public trust in our court system.

8. ID.; ID.; SPECIAL CIVIL ACTIONS; *MANDAMUS*; REQUISITES.— The following are required for *mandamus* to lie: first, "the plaintiff has a clear legal right to the act demanded"; second, "it must be the duty of the defendant to perform the act, because it is mandated by law"; third, "the defendant unlawfully neglects the performance of the duty enjoined by law"; fourth, "the act to be performed is ministerial, not discretionary"; and, lastly, "there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law." The first requisite is absent in this case.

9. ID.; ID.; PROVISIONAL REMEDY; INJUNCTION; SECTIONS 15 AND 16 OF ARTICLE XIV OF THE CONSTITUTION ARE NOT LEGAL BASES FOR STOPPING THE CONSTRUCTION OF TORRE DE MANILA, AS NOTHING THEREIN INDICATES THAT THE SIGHTLINES AND SETTING SURROUNDING A HISTORICAL AND CULTURAL HERITAGE OR RESOURCE IS SUBJECT TO PROTECTION.— Petitioner Knights of Rizal has no clear legal right to an injunction against the construction of Torre de Manila. Petitioners failed to point to a law that specifically prohibits the construction of any structure that may obstruct the sightline, setting, or backdrop of a historical or cultural heritage or resource. Petitioner Knights of Rizal mainly argues that the sightlines and setting of the Rizal Monument are protected under Sections 15 and 16, Article XIV of the Constitution x x x. Sections 15 and 16, Article XIV of the Constitution are not legal bases for stopping the construction of Torre de Manila. Textually, nothing in Sections 15 and 16 indicates that the sightlines and setting surrounding a historical and cultural heritage or resource is subject to protection. Sections 15 and 16 contain substantive standards too general to serve as basis *for courts* to grant any relief to petitioner Knights of Rizal. To attempt to operate with these general substantive standards will "propel courts into uncharted

ocean of social and economic policy making," encroaching on the functions properly belonging to the legislative and executive branches.

10. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; CONSTITUTIONAL PROVISIONS; SELF-EXECUTING AND NON-EXECUTING PROVISIONS, DISTINGUISHED.— A self-executing provision of the Constitution is one "complete in itself and becomes operative without the aid of supplementary or enabling legislation." It "supplies [a] sufficient rule by means of which the right it grants may be enjoyed or protected." "[I]f the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action," the provision is self-executing. On the other hand, if the provision "lays down a general principle," or an enabling legislation is needed to implement the provision, it is not self-executing. [T]he distinction (between self-executing and non-executing provisions) creates false second-order constitutional provisions. It gives the impression that only self-executing provisions are imperative. All constitutional provisions, even those providing general standards, must be followed. Statements of general principles and policies in the Constitution are frameworks within which branches of the government are to operate. The key is to examine if the provision contains a prestation and to which branch of the government it is directed. If addressed either to the legislature or the executive, the obligation is not for this Court to fulfill.

11. ID.; ID.; ID.; ID.; NO SECOND-ORDER PROVISIONS IN THE CONSTITUTION AS THE VALUE OF EACH PROVISION IS IMPLICIT IN THEIR NORMATIVE CONTENT.— There are no second-order provisions in the Constitution. We create this category when we classify the provisions as "self-executing" and "non self-executing." Rather, the value of each provision is implicit in their normative content. For instance, Sections 14, 15, 16, and 17, Article XIV of the Constitution must be read as provisions that contribute to each other's coherence. That is, we must interpret them holistically to understand the concepts labeled as culture and history. None of these provisions deserve to be read in isolation.

12. ID.; ID.; ID.; ID.; ARTS AND CULTURE; THE NATIONAL HISTORICAL COMMISSION OF THE PHILIPPINES' GUIDELINES ON MONUMENTS HONORING NATIONAL HEROES, ILLUSTRIOUS FILIPINOS AND OTHER PERSONAGES AND THE PROVISIONS OF THE VENICE CHARTER HAVE NO LEGAL EFFECT.— [T]extually, nothing in Republic Act Nos. 4846, 7356, and 10066 provides that the "physical integrity" of a historical or cultural property includes its sightlines and settings. As for the National Historical Commission of the Philippines' Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages, they do not have any legal effect. It has not been shown that these Guidelines were published or that a copy was deposited in the University of the Philippines Law Center. Assuming that these Guidelines have the force of law, they allow for "urban renewal" of the site surrounding a monument. In this case, there is resistance against this "urban renewal" considering that Torre de Manila is the first high-rise building visible at the Rizal Monument's backdrop. However, as submitted by the National Historical Commission of the Philippines during the hearing on August 27, 2014 conducted by the Senate Committee on Education, Arts and Culture, there is no law prohibiting the construction of Torre de Manila. Further, the Venice Charter has not been concurred in by at least two-thirds of all the members of the Senate. Hence, its provisions have no legal effect in this jurisdiction.

13. ID.; ID.; ID.; ID.; ID.; THE SUPREME COURT CAN NEITHER IMPOSE AN INTERPRETATION WHICH HAS NOT RIPENED INTO A LEGAL OBLIGATION NOR CREATE INTERNATIONAL NORM OF A BINDING CHARACTER. — [I]n spite of an acknowledgment that neither the National Historical Commission of the Philippines' Guidelines nor the Venice Charter has legal effect, the dissent suggests that the Venice Charter should be given weight in legal interpretation. x x x. Unless we are ready to supplant the Congress or the National Historical Commission of the Philippines' efforts to discharge their legal process, we cannot impose an interpretation which precisely has not ripened into a legal obligation. Neither can we create international norm of a binding character. We are not the part of the State that participates in the articulation of *opinio juris* for purposes of international customary law. Neither do we, as a Court, participate

in the crafting or concurrence of treaties. To do all these in the guise of the Latin principle *verba artis in arte* is to misplace the use of that canon. Terms of art will apply only when there is an art or profession to which it belongs. "Terms of art" is jargon to a profession or art mediums. It does not apply for a normative interpretation that is still contested.

14. ID.; LOCAL GOVERNMENT CODE; ZONING ORDINANCE; SECTIONS 45, 47, 48 AND 53 OF ORDINANCE NO. 8119 ARE INAPPLICABLE TO THE CASE AT BAR.— Section 47, paragraph 7 does not apply in this case. The provision requires that "residential and commercial infill *in heritage areas* will be sensitive to the existing scale and pattern of those areas which maintains the existing landscape and streetscape qualities of those areas, and which does not result in the loss of any heritage resources." Torre de Manila is *not within* a heritage area but within a university cluster zone. Neither does Section 47, paragraph 9 apply. It is addressed to "local utility companies (hydro, gas, telephone, cable)" who are "required to place metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless telecommunication towers and other utility equipment and devices in locations which do not detract from the visual character of heritage resources, and which do no have negative impact on its architectural integrity." DMCI Project Developers, Inc. is not a local utility company. Neither is it placing any equipment within a historic site or facility. x x x. With respect to Section 48, it sets standards for project development to be followed within a "specific site" and its "adjacent properties," *i.e.*, within a specific cluster zone. Torre de Manila and the Rizal Monument are not adjacent or contiguous properties, nor do they belong to the same cluster zone. Neither is there an existing complaint that DMCI Project Developers, Inc. violated the "environmental character or limitations" of the cluster zone where Torre de Manila is constructed. Section 48, therefore, is inapplicable. x x x. Sections 45 and 53 of Ordinance No. 8119 concern environmental conservation and protection standards, specifically, the protection of natural resources. Section 45, paragraph 1 relates to protecting views of natural resources. Section 53 requires project developers to secure environmental compliance certificates before commencing or developing environmentally critical projects or projects located in environmentally critical areas. The Rizal Monument is not a

natural resource. There is no allegation that Torre de Manila is an environmentally critical project or is located in an environmentally critical area. To apply Sections 45 and 53 of Ordinance No. 8119, x x x is patently strained.

15. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; THE PUBLIC RESPONDENTS ARE UNDER NO LEGAL OBLIGATION TO STOP THE CONSTRUCTION OF TORRE DE MANILA FOR THERE IS NO LAW REQUIRING THE PROTECTION OF A HISTORICAL OR CULTURAL PROPERTY'S SIGHTLINE OR SETTING. — Respondents have no legal duty to petitioner Knights of Rizal. The respondent, DMCI Project Developers, Inc. is a private corporation with no legal obligation to petitioner Knights of Rizal. As for public respondents National Historical Commission of the Philippines, the National Museum, the National Commission for Culture and the Arts, and the City of Manila, they are under no legal obligation to stop the construction of Torre de Manila for, there is no law requiring the protection of a historical or cultural property's sightline or setting.

16. ID.; ID.; ID.; ID.; CANNOT BE ISSUED WHERE THE ACT SOUGHT TO BE PERFORMED IS NOT MINISTERIAL, BUT DISCRETIONARY; MINISTERIAL AND DISCRETIONARY ACT, DISTINGUISHED. — The act sought to be performed in this case is not ministerial. An act is ministerial if the "duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his [or her] own judgment upon the propriety or impropriety of the act done." On the other hand, an act is discretionary if it "gives [the public officer] the right to decide how or when the duty shall be performed." For respondent DMCI Project Developers, Inc., it is a private corporation not legally or contractually bound to perform any act in favor of petitioner Knights of Rizal. For respondents National Historical Commission of the Philippines, National Commission for Culture and the Arts, and the National Museum, they have no duty under our present laws to stop the construction of any structure that obstructs the sightline, setting, or backdrop of a historical or cultural heritage or resource. There is no act, whether ministerial or discretionary, that can be required of them. For respondent

City of Manila, the act sought to be performed is discretionary, not ministerial. Under Ordinance No. 8119, the City of Manila is empowered to decide whether or not to grant project developers, such as DMCI Project Developers, Inc., a variance allowing the construction of a structure beyond the prescribed floor-to-area ratio for a specific cluster zone. Here, the City of Manila, through its Sangguniang Panlungsod, decided to grant DMCI Homes, Inc. a variance that allowed the developer to construct a building beyond the floor-to-area ratio of four (4) for structures within a university cluster zone.

17. ID.; ID.; ID.; ID.; RE-EVALUATION OF THE PERMITS ISSUED IN FAVOR OF PRIVATE RESPONDENT IS A FUTILE EXERCISE, AS THE GRANT OF A BUILDING PERMIT OR VARIANCE IS A DISCRETIONARY ACT AND THE DISCRETION HAS ALREADY BEEN EXERCISED.— [O]rdering the City of Manila to "re-evaluate with dispatch the permits issued in favor of [DMCI Project Developers, Inc.]" is a futile exercise. It does not solve the constitutional issue presented in this case: whether the sightlines and settings of historical or cultural heritage or resources are protected under Sections 15 and 16, Article XIV of the Constitution. Second, the grant of a building permit or variance is a discretionary act and, in this case, the discretion has already been exercised. Third, in awaiting the final decision on the re-evaluation process, we are leaving to the City of Manila the effectivity of the temporary restraining order we issued. We are effectively delegating our power to a local government unit, in avoidance of our duty to finally decide this case.

18. ID.; ID.; ID.; ID.; A WRIT OF *MANDAMUS* AGAINST THE CONSTRUCTION OF TORRE DE MANILA DOES NOT LIE; THE TEMPORARY RESTRAINING ORDER SHOULD BE LIFTED.— There were other plain, speedy, and adequate remedies in the ordinary course of law available to petitioner Knights of Rizal. [T]he Petition should have been filed before the regional trial court to resolve the factual issues involved and for a more adequate and exhaustive resolution of this case. x x x. Petitioner Knights of Rizal could not effectively assail the issuance of a variance to DMCI Project Developers, Inc. in an action in the Supreme Court. Under Section 77 of Ordinance No. 8119, the remedy of filing an opposition to the application for variance before the Manila Zoning Board of

Adjustments and Appeals was available to petitioner Knights of Rizal. x x x. Given the foregoing, a writ of *mandamus* against the construction of Torre de Manila does not lie. With petitioner having no clear legal right to the relief sought, there can be no great or irreparable injury to petitioners and the temporary restraining order issued by this Court has no solid ground. Thus, the temporary restraining order must be lifted.

TIJAM, *J.*, *concurring opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; REQUISITES; FOR *MANDAMUS* TO ISSUE, IT MUST BE SHOWN THAT PETITIONER HAS A WELL-DEFINED LEGAL RIGHT TO JUDICIALLY DEMAND, AND PUBLIC RESPONDENTS OR ANY OF THEM HAS THE CONCOMITANT LEGAL DUTY TO CARRY OUT, THE PRESERVATION OF THE VISTA, SIGHTLINE AND SETTING OF THE RIZAL PARK AND THE RIZAL MONUMENT.— *Mandamus* is a command issuing from a court of law of competent jurisdiction, in the name of the state or the sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law. *Mandamus* will lie if the tribunal, corporation, board, officer, or person unlawfully neglects the performance of said duty. It is, thus, essential to the issuance of a writ of *mandamus* that the applicant should have a **clear, certain and well-defined legal right** to the thing demanded, and it must be the **clear and imperative duty** of the respondent to perform the act required. Accordingly, for *mandamus* to issue in this case, it must be shown that petitioner has a well-defined legal right to judicially demand, and public respondents or any of them has the concomitant legal duty to carry out, the preservation of the vista, sightline and setting of the Rizal Park and the Rizal Monument.

2. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; ARTS AND CULTURE; THE CONSTITUTIONAL MANDATE EXPRESSED IN SECTIONS 15 AND 16, ARTICLE XIV OF THE CONSTITUTION CANNOT, ON ITS OWN, BE THE

SOURCE OF THE AVOWED RIGHT TO THE PRESERVATION OF THE VISTA, SIGHTLINE AND SETTING OF THE RIZAL PARK AND RIZAL MONUMENT.— Petitioner anchored its petition on Sections 15 and 16, Article XIV of the 1987 Constitution x x x. The x x x constitutional provisions mandate the conservation, promotion and protection of historical and cultural heritage and resources, but do not specify a clear legal right to the protection of the vista, sightline and setting thereof. Broadly written, the provisions use the words "conserve," "promote," "popularize" and "protect" which are open to different interpretations, as demonstrated no less by the parties' conflicting positions on their breadth and scope when applied to the construction of the Torre de Manila. The provisions further refer to but do not define what constitutes the nation's "historical and cultural heritage and resources," "artistic creations," and "artistic and historic wealth." The authority given to the State to regulate the disposition of the country's artistic and historic wealth also indicates that further government action is intended to enforce the constitutional policy of conserving and protecting our heritage resources. Legislation is, thus, necessary to supply the norms and standards and define the parameters for the implementation of the constitutional protection of historical and cultural heritage and resources. x x x. Thus, the constitutional mandate expressed in Sections 15 and 16, Article XIV of the Constitution cannot, on its own, be the source of the avowed right to the preservation of the vista, sightline and setting of the Rizal Park and Rizal Monument.

3. ID.; ID.; ID.; ID.; A CLEAR LEGAL RIGHT TO THE PROTECTION OF THE VISTA, SIGHTLINE AND SETTING OF THE RIZAL MONUMENT AND THE RIZAL PARK HAS NOT BEEN ESTABLISHED IN LEGISLATION AS AN ASPECT OF THE CONSTITUTIONAL POLICY TO CONSERVE, PROMOTE AND PROTECT HISTORICAL AND CULTURAL HERITAGE AND RESOURCES; LEGISLATIVE FAILURE TO PURSUE STATE POLICIES CANNOT GIVE RISE TO A CAUSE OF ACTION IN THE COURTS.— RA 10086 (Strengthening Peoples' Nationalism Through Philippine History Act) empowers the National Historical Commission of the Philippines (NHCP) to "(d)etermine the manner of identification, maintenance, restoration, conservation and preservation of historical sites,

shrines, structures and monuments," and to (r)egulate activities pertaining to the preservation, restoration and conservation of historical property or resources. The law, however, does not indicate specific and operable norms and standards for the protection of the vista, sightline or setting of historic monuments and sites. x x x. Invoked by the petitioner, the NHCP's Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and other Personages (guidelines) provide that monuments should be given due prominence since they symbolize national significance. x x x. However, xxx it has not been shown that these Guidelines had been published and a copy thereof deposited with the Office of the National Administrative Register in the University of the Philippines' Law Center. Thus, they cannot be considered effective and binding. x x x. Assuming the Guidelines are effective, they may not be deemed to impose an absolute prohibition against structures erected within the monument's vicinity, sightline, or setting, subject only to the structures' compliance with the local government's restrictions on height, design and volume, and to urban renewal standards. x x x. RA 8492 (National Museum Act of 1998), which tasked the National Museum to supervise the restoration, preservation, reconstruction, demolition, alteration, relocation and remodeling of immovable properties and archaeological landmarks and sites, contains no indication that such duty extended to the preservation of the vista, sightline and setting of cultural properties. x x x. RA 10066 refers to the protection of the *physical integrity* of the heritage property or site, and does not specify operable norms and standards indicating that the protection extends to its vista, sightline or setting. x x x. In fine, a clear legal right to the protection of the vista, sightline and setting of the Rizal Monument and the Rizal Park has not been established in legislation as an aspect of the constitutional policy to conserve, promote and protect historical and cultural heritage and resources. It is settled that legislative failure to pursue state policies cannot give rise to a cause of action in the courts.

4. ID.; ID.; ID.; ID.; SECTION 47 OF ORDINANCE NO. 8119 WILL NOT APPLY AS THE TORRE DE MANILA IS LOCATED IN THE UNIVERSITY CLUSTER ZONE, WHICH IS NOT A HISTORICAL SITE, A HERITAGE AREA, OR A DESIGNATED HERITAGE PROPERTY.— An examination of Section 47 of Ordinance No. 8119, however,

will reveal that the guidelines set therein refer to *the historical site or the heritage area itself*, or to the physical integrity of the *designated heritage property*. Thus, Section 47 speaks of the conservation and enhancement of the heritage value of the historical site; it also refers to the alteration demolition and re-use of designated heritage properties, and development plans within the heritage area. In fact, it is expressly prefaced by a statement alluding to the enumeration as guidelines in the "development of *historic sites and facilities*." Records show that Torre de Manila is located in the University Cluster Zone, 870 meters outside and to the rear of Rizal Park. The zone is not a historical site, a heritage area, or a designated heritage property. Thus, Section 47 of Ordinance No. 8119 will not apply.

5. ID.; ID.; ID.; ID.; SECTION 48 OF ORDINANCE NO. 8119 IS INAPPLICABLE AS IT IS DOUBTFUL THAT THE SAME PROVIDES NORMS AND STANDARDS INTENDED TO PRESERVE THE SIGHTLINE OR SETTING OF THE RIZAL MONUMENT; *MANDAMUS* WILL NOT ISSUE TO ENFORCE A RIGHT WHICH IS IN SUBSTANTIAL DISPUTE OR AS TO WHICH A SUBSTANTIAL DOUBT EXISTS.— Section 48 of Ordinance No. 8119, which enumerates the "Site Performance Standards," appears to apply to all development projects in the City of Manila. It requires that the development project should be "aesthetically pleasing" and "in harmony with the existing and intended character of its neighborhood," and that it should consider the "natural environmental character of the site and its adjacent properties." The neighborhood within which the Torre de Manila is situated is the University Cluster Zone. Furthermore, the building is not adjacent to or adjoining the Rizal Park or the Rizal Monument. By the language of Section 48, the "adjacent properties" mentioned therein would refer to properties adjoining the Torre de Manila site within the University Cluster Zone, such that "harmony with the existing and intended character of the neighborhood" would be achieved. It is, thus, doubtful that Section 48 provides norms and standards intended to preserve the sightline or setting of the Rizal Monument. It has been held that *mandamus* will not issue to enforce a right which is in substantial dispute or as to which a substantial doubt exists.

6. ID.; ID.; ID.; ARTS AND CULTURE; THE ABSENCE OF PARAMETERS, DEFINITIONS OR CRITERIA TO

ASCERTAIN HOW HERITAGE VALUE IS DEEMED TO HAVE BEEN CONSERVED AND ENHANCED, WHAT ADVERSELY IMPACTS THE HERITAGE SIGNIFICANCE OF A PROPERTY, WHAT SUFFICIENTLY DETRACTS FROM THE VISUAL CHARACTER OF A HERITAGE PROPERTY, AND WHAT IS AESTHETICALLY PLEASING CREATES CONSIDERABLE ROOM FOR SUBJECTIVE INTERPRETATION AND USE OF DISCRETION THAT COULD AMOUNT TO AN UNDUE DELEGATION OF LEGISLATIVE POWER.— Even assuming that Ordinance No. 8119 extends protection to the vista, sightline or setting of a historical site or property, it does not specify the paramaters by which the City Development and Planning Office (CDPO) shall determine compliance, thereby giving the CDPO wide discretion in ascertaining whether or not a project preserves the heritage site or area. Under the guidelines and standards of Sections 47 and 48 of Ordinance No. 8119, development projects: should conserve and enhance the heritage value of the historic site; should not adversely impact the heritage significance of the heritage property; should not result in the loss of any heritage resources; should not detract from the visual character of heritage resources; and should be aesthetically pleasing. There are no parameters, definitions or criteria to ascertain how heritage value is deemed to have been conserved and enhanced, what adversely impacts the heritage significance of a property, what sufficiently detracts from the visual character of a heritage property, and what is aesthetically pleasing. The absence of such parameters creates considerable room for subjective interpretation and use of discretion that could amount to an undue delegation of legislative power.

7. ID.; ID.; LEGISLATIVE DEPARTMENT; VALID DELEGATION OF LEGISLATIVE POWER; COMPLETENESS AND SUFFICIENT STANDARD TEST, DISTINGUISHED; SECTIONS 47 AND 48 OF ORDINANCE NO. 8119 FAIL TO COMPLY WITH THE COMPLETENESS TEST.— Two tests determine the validity of delegation of legislative power: (1) the completeness test and (2) the sufficient standard test. Under the first test or the so-called completeness test, the law must be complete in all its terms and conditions when it leaves the legislature such that

when it reaches the delegate, *the only thing he will have to do is to enforce it*. The second test or the sufficient standard test, mandates that there should be adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot. By their language and provisions, Sections 47 and 48 of Ordinance No. 8119 fail to comply with the completeness test.

8. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; A WRIT OF *MANDAMUS* WILL NOT LIE IN THE ABSENCE OF A CLEAR LEGAL RIGHT TO THE PROTECTION OF THE VISTA, SIGHTLINE AND SETTING OF THE RIZAL MONUMENT, AND THE CONCOMITANT LEGAL DUTY TO ENFORCE SUCH RIGHT.— A writ of *mandamus* can be issued only when petitioner's legal right to the performance of a particular act which is sought to be compelled is **clear and complete**. A clear legal right is a right which is **indubitably granted by law** or is inferable as a matter of law. No clear and complete legal right to the protection of the vista, sightline and setting of the Rizal Park and Rizal Monument has been shown to exist. x x x. In the absence of a clear legal right to the protection of the vista, sightline and setting of the Rizal Monument, and the concomitant legal duty to enforce such right, *mandamus* will not lie. The writ of *mandamus* will not issue to compel an official to do anything which is not his duty to do or which it is his duty not to do, or to give to the applicant anything to which he is not entitled by law.

9. STATUTORY CONSTRUCTION; STATUTES; THE COURT CANNOT, IN THE GUISE OF INTERPRETATION, ENLARGE THE SCOPE OF A STATUTE OR INSERT INTO A STATUTE WHAT THE LEGISLATURE OMITTED, WHETHER INTENTIONALLY OR UNINTENTIONALLY.— The Court cannot, in the guise of interpretation, enlarge the scope of a statute or insert into a statute what the legislature omitted, whether intentionally or unintentionally. To read into an ordinance objects which were neither specifically mentioned nor enumerated would be to run afoul of the dictum that where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters. Thus, in *Canet v. Mayor Decena*, the Court explained: Even on the assumption

that there is in fact a legislative gap caused by such an omission, neither could the Court presume otherwise and supply the details thereof, because a **legislative lacuna cannot be filled by judicial fiat**. Indeed, **courts may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers**. An omission at the time of the enactment, whether careless or calculated, cannot be judicially supplied however after later wisdom may recommend the inclusion. **Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention has been called to the omission**.

10. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; CAN BE ISSUED ONLY IN CASES WHERE THE USUAL MODES OF PROCEDURE AND FORMS OF REMEDY ARE POWERLESS TO AFFORD RELIEF.— An important principle followed in the issuance of the writ of *mandamus* is that there should be **no** *plain, speedy and adequate remedy in the ordinary course of law* other than the remedy of *mandamus* being invoked. In other words, mandamus can be issued only in cases where the usual modes of procedure and forms of remedy are powerless to afford relief. x x x. Section 77 of Ordinance No. 8119, however, expressly provides for a remedy in case of violation of its provisions; it allows for the filing of a verified complaint before the Manila Zoning Board of Assessment and Appeals for any violation of the Ordinance or of any clearance or permits issued pursuant thereto, including oppositions to applications for clearances, variance or exception.

11. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; IF RESORT TO A REMEDY WITHIN THE ADMINISTRATIVE MACHINERY CAN STILL BE MADE BY GIVING THE ADMINISTRATIVE OFFICER CONCERNED EVERY OPPORTUNITY TO DECIDE ON A MATTER THAT COMES WITHIN HIS OR HER JURISDICTION, THEN SUCH REMEDY SHOULD BE EXHAUSTED FIRST BEFORE THE COURTS' JUDICIAL POWER CAN BE SOUGHT; EXCEPTION. — The general rule is that before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself

of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the courts' judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case. An exception to said rule is when the issue raised is a purely legal question, well within the competence and the jurisdiction of the court and not the administrative agency.

12. ID.; EVIDENCE; FACTUAL FINDINGS; THE SUPREME COURT IS NOT A TRIER OF FACTS AND IT IS NOT DUTY-BOUND TO ANALYZE AND WEIGH EVIDENCE PERTAINING TO FACTUAL ISSUES WHICH HAVE NOT BEEN SUBJECT OF ANY PROPER PROCEEDINGS BELOW.— The calculation of the maximum allowable building height, the alleged violation of existing regulations under Ordinance No. 8119, and the existence or non-existence of the conditions for approval of a variance by reason of non-conformity with the height restrictions, are questions of fact which the City of Manila could pass upon under Section 77 of Ordinance No. 8119. Likewise, whether or not the Torre de Manila is a nuisance, and whether or not private respondent acted in good faith, are factual issues that should not have been raised at the first instance before this Court. The Supreme Court is not a trier of facts and it is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. More so, this Court is not duty-bound to analyze and weigh evidence pertaining to factual issues which have not been subject of any proper proceedings below.

13. ID.; CIVIL PROCEDURE; COURTS; JUDICIAL HIERARCHY OF COURTS; WHILE THE SUPREME

COURT HAS CONCURRENT JURISDICTION WITH THE REGIONAL TRIAL COURTS AND THE COURT OF APPEALS TO ISSUE THE EXTRAORDINARY WRITS, HIERARCHY IS DETERMINATIVE OF THE VENUE OF APPEALS AND OF PETITIONS FOR THE EXTRAORDINARY WRITS.— Any judicial intervention should have been sought at the first instance from the Regional Trial Court which has the authority to resolve constitutional issues, more so where questions of fact are involved. A direct recourse to this Court is highly improper for it violates the established policy of strict observance of the judicial hierarchy of courts. While we have concurrent jurisdiction with the Regional Trial Courts and the Court of Appeals to issue the extraordinary writs, this concurrence is not to be taken as an unrestrained freedom of choice as to which court the application for the writ will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. This Court is a court of last resort and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution and immemorial tradition.

14. ID.; ID.; SPECIAL CIVIL ACTIONS; *MANDAMUS*; LIES TO COMPEL THE PERFORMANCE OF DUTIES THAT ARE PURELY MINISTERIAL IN NATURE, NOT THOSE THAT ARE DISCRETIONARY; ISSUANCE OF PERMITS TO DEVELOPERS AND GRANT OF VARIANCES FROM HEIGHT RESTRICTIONS ARE NOT PURELY MINISTERIAL FUNCTIONS THAT CAN BE COMPELLED BY *MANDAMUS*, AS THE CITY OF MANILA EXERCISES DISCRETION AND JUDGMENT UPON A GIVEN SET OF FACTS.— A key principle to be observed in dealing with petitions for *mandamus* is that such extraordinary remedy lies to compel the performance of duties that are **purely ministerial** in nature, not those that are discretionary. A **purely ministerial** act or duty is one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of its own judgment upon the propriety or impropriety of the act done. The duty is ministerial only when its discharge requires neither the exercise

of official discretion or judgment. In issuing permits to developers and in granting variances from height restrictions, the City of Manila exercises discretion and judgment upon a given set of facts. Such acts are not purely ministerial functions that can be compelled by *mandamus*.

15. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; SUPREME COURT; POWER OF JUDICIAL REVIEW; REQUISITES.— Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations. The following requisites must be complied with before this Court can take cognizance of the case: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.

16. ID.; ID.; ID.; ID.; ID.; ID.; REQUIREMENT OF *LOCUS STANDI;* DIRECT INJURY TEST; FOR A PRIVATE INDIVIDUAL TO INVOKE THE JUDICIAL POWER TO DETERMINE THE VALIDITY OF AN EXECUTIVE OR LEGISLATIVE ACTION, HE MUST SHOW THAT HE HAS SUSTAINED A DIRECT INJURY AS A RESULT OF THAT ACTION, FOR IT IS NOT SUFFICIENT THAT HE HAS A GENERAL INTEREST COMMON TO ALL MEMBERS OF THE PUBLIC.— This Court, in determining *locus standi*, has applied the "direct injury" test which requires that for a private individual to invoke the judicial power to determine the validity of an executive or legislative action, **he must show that he has sustained a direct injury as a result of that action. It is not sufficient that he has a general interest common to all members of the public**. Accordingly, *locus standi* or legal standing has been defined as a **personal and substantial interest** in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. Jurisprudence defines interest as "material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest

in the question involved, or a mere incidental interest. By real interest is meant a **present substantial interest**, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest."

17. ID.; ID.; ID.; ID.; ID.; ID.; GENERALIZED INTERESTS, ALBEIT ACCOMPANIED BY THE ASSERTION OF A PUBLIC RIGHT, DO NOT ESTABLISH *LOCUS STANDI;* THE EXPERIENCE OF LOOKING AT THE VISTA OF THE RIZAL PARK AND THE RIZAL MONUMENT AND FINDING IT MARRED BY THE SUBJECT STRUCTURE DOES NOT GIVE RISE TO A SUBSTANTIAL AND PERSONAL INJURY THAT WILL GIVE *LOCUS STANDI* TO PETITIONER TO FILE THE *MANDAMUS* PETITION. — [P]etitioner cannot be considered to have satisfied the "direct injury" test. Petitioner alleged that it is a public, non-profit organization created under RA 646, and pursuant to its mandate, it conducts activities at the Rizal Park to commemorate Jose Rizal's birth and martyrdom at least twice a year. Petitioner asserted that its legal mandate to celebrate Rizal's life was violated on account of private respondent's Torre de Manila project which continue to mar the previously unobstructed view of the Rizal Park. Such interest, however, cannot be said to be personal and substantial enough to infuse petitioner with the requisite *locus standi*. It certainly is not a present or immediate interest, as petitioner's commemorative activities are not constantly conducted in the Rizal Park. The experience of looking at the vista of the Rizal Park and the Rizal Monument and finding it marred by the subject structure does not give rise to a substantial and personal injury that will give *locus standi* to petitioner to file this case. It is what can be considered as an incidental, if not a generalized, interest. Generalized interests, albeit accompanied by the assertion of a public right, do not establish *locus standi.* Evidence of a direct and personal interest is key.

18. ID.; ID.; ID.; ID.; ID.; ID.; THE RULE ON *LOCUS STANDI* IS NOT A PLAIN PROCEDURAL RULE BUT A CONSTITUTIONAL REQUIREMENT WHICH MANDATES COURTS OF JUSTICE TO SETTLE ONLY ACTUAL CONTROVERSIES INVOLVING RIGHTS WHICH ARE LEGALLY DEMANDABLE AND ENFORCEABLE; EXPLAINED.— The rule on *locus standi* is not a plain

procedural rule but a constitutional requirement derived from Section 1, Article VIII of the Constitution, which mandates courts of justice to settle *only* "actual controversies involving rights which are legally demandable and enforceable." This Court, in *Lozano v. Nograles*, explained: x x x [C]ourts are neither free to decide *all* kinds of cases dumped into their laps nor are they free to open their doors to *all* parties or entities claiming a grievance. The rationale for this constitutional requirement of *locus standi* is by no means trifle. It is intended "to assure a vigorous adversary presentation of the case, and, perhaps more importantly to warrant the judiciary's overruling the determination of a coordinate, democratically elected organ of government." It thus goes to the very essence of representative democracies.

19. ID.; ID.; ID.; ID.; ID.; ID.; AN INDISCRIMINATE DISREGARD OF THE REQUISITES FOR THE COURT'S JUDICIAL REVIEW, EVERY TIME "TRANSCENDENTAL OR PARAMOUNT IMPORTANCE OR SIGNIFICANCE" IS INVOKED WOULD RESULT IN UNACCEPTABLE CORRUPTION OF THE SETTLED DOCTRINE OF *LOCUS STANDI* AS EVERY WORTHY CAUSE IS AN INTEREST SHARED BY THE GENERAL PUBLIC; THE RESOLUTION OF ANY TRANSCENDENTAL ISSUE IN THE CASE AT BAR WILL BE FUTILE DUE TO PROCEDURAL INFIRMITIES.— Petitioner has likewise failed to justify an exemption from the *locus standi* rule on grounds of "transcendental importance." In *Galicto v. Aquino*, this Court held that "even if (it) could have exempted the case from the stringent *locus standi* requirement, such heroic effort would be futile because the transcendental issue could not be resolved any way, **due to procedural infirmities and shortcomings**." The Court explained that giving due course to a petition saddled with such formal and procedural infirmities would be "an exercise in futility that does not merit the Court's liberality." [I]t was error for petitioner to have filed this case directly before the Supreme Court, as other plain, speedy and adequate remedies were still available and the case indubitably involves questions of fact. Thus, the resolution of any transcendental issue in this case will be rendered futile by reason of these procedural infirmities. Furthermore, it could not escape this Court's attention that what petitioner filed before this Court was, in fact, a petition for injunction over which the Court does

not exercise original jurisdiction. While the Court has taken an increasingly liberal approach to the rule of *locus standi*, evolving from the stringent requirements of personal injury to the broader transcendental importance doctrine, such liberality is not to be abused. Indeed, the "transcendental importance" doctrine cannot be loosely invoked or broadly applied, for as this Court previously explained: **In the final scheme, judicial review is effective largely because it is not available simply at the behest of a partisan faction, but is exercised only to remedy a particular, concrete injury.** When warranted by the presence of indispensable minimums for judicial review, this Court shall not shun the duty to resolve the constitutional challenge that may confront it. Thus, this Court, in the recent case of *Roy v. Herbosa*, held that an indiscriminate disregard of the requisites for this Court's judicial review, every time "transcendental or paramount importance or significance" is invoked would result in unacceptable corruption of the settled doctrine of *locus standi* as every worthy cause is an interest shared by the general public.

20. ID.; ID.; ID.; ID.; ID.; ID.; REQUIREMENT OF ACTUAL CASE OR CONTROVERSY; THERE MUST BE A CONTRARIETY OF LEGAL RIGHTS THAT CAN BE INTERPRETED AND ENFORCED ON THE BASIS OF EXISTING LAW AND JURISPRUDENCE; NEITHER THE CONSTITUTION NOR EXISTING LEGISLATION, INCLUDING ORDINANCE NO. 8119, PROVIDES FOR SPECIFIC AND OPERABLE NORMS AND STANDARDS THAT GIVE RISE TO A JUDICIALLY ENFORCEABLE RIGHT TO THE PROTECTION OF THE VISTA, SIGHTLINE AND SETTING OF THE RIZAL PARK AND RIZAL MONUMENT.— Petitioner has also failed to present a justiciable controversy. An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. **There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.** The Court can decide the constitutionality of an act or treaty only when a proper case between opposing parties is submitted for judicial determination. The existence of an actual case or controversy, thus, presupposes the presence of legally enforceable rights. In this case, petitioner asserts

that it has the right to stop the construction of the Torre de Manila on the strength of Sections 15 and 16, Article XIV of the Constitution, which requires the State to conserve and protect the nation's historical and cultural heritage and resources. Petitioner argues that heritage preservation includes the sightline and setting of the Rizal Park and Rizal Monument. However, x x x neither the Constitution nor existing legislation, including Manila's Ordinance No. 8119, provides for specific and operable norms and standards that give rise to a judicially enforceable right to the protection of the vista, sightline and setting of the Rizal Park and Rizal Monument.

21. ID.; ID.; ID.; ID.; ID.; REQUIREMENT OF RIPENESS; FOR A CASE TO BE CONSIDERED RIPE FOR ADJUDICATION, IT IS A PREREQUISITE THAT SOMETHING HAD THEN BEEN ACCOMPLISHED OR PERFORMED BY EITHER BRANCH BEFORE A COURT MAY COME INTO THE PICTURE, AND THE PETITIONER MUST ALLEGE THE EXISTENCE OF AN IMMEDIATE OR THREATENED INJURY TO ITSELF AS A RESULT OF THE CHALLENGED ACTION, AND MUST SHOW THAT IT HAS SUSTAINED OR IS IMMEDIATELY IN DANGER OF SUSTAINING SOME DIRECT INJURY AS A RESULT OF THE ACT COMPLAINED OF.— [R]elated to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the **petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action. It must show that it has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.** [P]etitioner has failed to show that it has sustained or is immediately in danger of sustaining a direct injury as a result of the construction of the Torre de Manila.

JARDELEZA, *J.*, *dissenting opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; TO PROSPER, PETITIONER

MUST ESTABLISH THE EXISTENCE OF A CLEAR LEGAL RIGHT TO THE THING DEMANDED AND IT MUST BE THE IMPERATIVE DUTY OF THE RESPONDENT TO PERFORM THE ACT REQUIRED.— [A] writ of *mandamus* is a command issuing from a court of law of competent jurisdiction, directed to some inferior court, tribunal, or board, requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law. For a petition for *mandamus* to prosper, petitioner must establish the existence of a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required. In *University of San Agustin, Inc. v. Court of Appeals*, we stated: **While it may not be necessary that the duty be absolutely expressed, it must however, be clear.** The writ will not issue to compel an official to do anything which is not his duty to do or which is his duty not to do, or give to the applicant anything to which he is not entitled by law. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.

2. ID.; RULES OF PROCEDURE; A LIBERAL APPLICATION OF PROCEDURAL RULES IS WARRANTED WHERE THE CASE PRESENTS SERIOUS CONSTITUTIONAL ISSUES OF FAR-REACHING IMPLICATIONS AND SIGNIFICANCE.— [A] relaxation of procedural rules is warranted considering the significance of the threshold and purely legal question involved in this case. As identified in the Court's Advisory, this threshold and purely legal question is: "**whether the definition of the Constitutional mandate to conserve, promote and popularize the nation's historical and cultural heritage and resources, includes, in the case of the Rizal Monument, the preservation of its prominence, dominance, vista points, vista corridors, sightlines and setting**." [T]his case presents serious constitutional issues of far-reaching implications and significance warranting a liberal application of procedural rules.

3. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; SUPREME COURT; JUDICIAL REVIEW; REQUIREMENT OF LEGAL STANDING; DIRECT INJURY TEST; FOR A

PARTY TO HAVE LEGAL STANDING, IT MUST BE SHOWN THAT HE HAS SUFFERED OR WILL SUFFER A DIRECT INJURY AS A RESULT OF THE ACT BEING CHALLENGED, THAT IS, HE MUST SHOW THAT HE HAS PERSONALLY SUFFERED SOME ACTUAL OR THREATENED INJURY BECAUSE OF THE ALLEGEDLY ILLEGAL CONDUCT OF THE GOVERNMENT, THE INJURY IS FAIRLY TRACEABLE TO THE CHALLENGED ACTION, AND THE INJURY IS LIKELY TO BE REDRESSED BY A FAVORABLE ACTION; MET.— Legal standing (*locus standi*) is defined as "a right of appearance in a court of justice on a given question." In *Belgica v. Ochoa, Jr.*, we explained that "[t]he gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." While rules on standing in public suits have in some cases been relaxed especially in relation to non-traditional plaintiffs like citizens, taxpayers, and legislators, we have generally adopted the "direct injury test" to determine whether a party has the requisite standing to file suit. Under this test, for a party to have legal standing, it must be shown that he has suffered or will suffer a direct injury as a result of the act being challenged, that is, he must show that: (1) he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action. [P]etitioner KOR sufficiently meets the requirements of the direct injury test.

4. ID.; ID.; ID.; ID.; ID.; ID.; THE COURT, IN THE EXERCISE OF ITS SOUND DISCRETION, HAS BRUSHED ASIDE PROCEDURAL BARRIERS AND TAKEN COGNIZANCE OF THE PETITIONS BEFORE IT WHERE COMPELLING REASONS EXIST, SUCH AS WHEN THE MATTER IS OF COMMON AND GENERAL INTEREST TO ALL CITIZENS OF THE PHILIPPINES, WHEN THE ISSUES ARE OF PARAMOUNT IMPORTANCE AND CONSTITUTIONAL SIGNIFICANCE, WHEN SERIOUS CONSTITUTIONAL QUESTIONS ARE INVOLVED, OR THERE ARE ADVANCE CONSTITUTIONAL ISSUES WHICH DESERVE THE COURT'S ATTENTION IN VIEW

OF THEIR SERIOUSNESS, NOVELTY, AND WEIGHT AS PRECEDENTS.— [W]here compelling reasons exist, such as when the matter is of common and general interest to all citizens of the Philippines; when the issues are of paramount importance and constitutional significance; when serious constitutional questions are involved; or there are advance constitutional issues which deserve our attention in view of their seriousness, novelty, and weight as precedents, this Court, in the exercise of its sound discretion, has brushed aside procedural barriers and taken cognizance of the petitions before us. The significant legal issues raised in this case far outweigh any perceived impediment in the legal personality of petitioner KOR to bring this suit.

5. STATUTORY CONSTRUCTION; CONSTITUTIONAL CONSTRUCTION; CONSTITUTIONAL PROVISIONS; PRESUMED SELF-EXECUTING; RATIONALE; A PROVISION IS SELF-EXECUTORY WHERE THE SAME SETS FORTH A SPECIFIC, OPERABLE LEGAL RIGHT, RATHER THAN A CONSTITUTIONAL OR STATUTORY POLICY.— In constitutional construction, it is presumed that constitutional provisions are self-executing. The reason is that "[i]f the constitutional provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law." This, however, does not make *all* constitutional provisions immediately self-executing. x x x. To determine whether a provision is self-executory, the test is to see whether the provision is "complete in itself as a definitive law, or if it needs future legislation for completion and enforcement." In other words, the provision must set forth "a specific, operable legal right, rather than a constitutional or statutory *policy*."

6. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; ARTS AND CULTURE; SECTIONS 15 AND 16 OF ARTICLE XIV OF THE CONSTITUTION ARE NOT SELF-EXECUTING PROVISIONS AS THEY ARE MERE STATEMENTS OF PRINCIPLE AND POLICY; STANDING ALONE, THESE PROVISIONS DO NOT CREATE ANY JUDICIALLY ENFORCEABLE RIGHT AND OBLIGATION FOR THE PRESERVATION, PROTECTION OR CONSERVATION OF THE "PROMINENCE, DOMINANCE, VISTA POINTS, VISTA

CORRIDORS, SIGHTLINES AND SETTING" OF THE RIZAL PARK AND THE RIZAL MONUMENT.— [S]ections 15 and 16, Article XIV of the Constitution invoked by petitioner KOR are **not** self-executing provisions. These provisions relied upon by KOR, *textually and standing alone*, do **not** create any judicially enforceable right and obligation for the preservation, protection or conservation of the "prominence, dominance, vista points, vista corridors, sightlines and setting" of the Rizal Park and the Rizal Monument. x x x [S]ections 15 and 16 are mere statements of principle and policy. The constitutional exhortation to "conserve, promote, and popularize the nation's historical and cultural heritage and resources," lacks "specific, operable norms and standards" by which to guide its enforcement. Enabling legislation is still necessary to define, for example, the scope, permissible measures, and possible limitations of the State's heritage conservation mandate. Congress, in the exercise of its plenary power, is alone empowered to decide whether and how to conserve and preserve historical and cultural property. [S]ections 15 and 16, by themselves, will be of no help to a defendant in an actual case for purposes of preparing an intelligent and effective defense. These sections also lack any comprehensible standards by which to guide a court in resolving an alleged violation of a right arising from the same.

7. ID.; ID.; ID.; ID.; NEITHER THE NATIONAL HISTORICAL COMMISSION OF THE PHILIPPINES (NHCP) GUIDELINES NOR THE VENICE CHARTER IS ENFORCEABLE. — The NHCP Guidelines is neither law nor an enforceable rule or regulation. Publication and filing with the Law Center of the University of the Philippines are indispensable requirements for statutes, including administrative implementing rules and regulations, to have binding force and effect. x x x. The NHCP Guidelines cannot thus be held as binding against respondent. Similarly, neither can the Venice Charter be invoked to prohibit the construction of the Torre de Manila project. The Venice Charter provides, in general terms, the steps that must be taken by State Parties for the conservation and restoration of monuments and sites, including these properties' setting. It does not, however, rise to a level of an enforceable law.

8. ID.; ID.; ID.; ID.; TERM "CONSERVATION" IN THE CULTURE, HISTORY, AND HERITAGE CONTEXT

COVERS NOT ONLY A HERITAGE PROPERTY'S PHYSICAL/TANGIBLE ATTRIBUTES, BUT ALSO ITS SETTING, THAT IS, ITS SURROUNDING NEIGHBORHOOD, LANDSCAPES, SITES, SIGHT LINES, SKYLINES, VISUAL CORRIDORS, AND VISTA POINTS; THUS ANY CHANGE TO THE SETTING OF A HERITAGE STRUCTURE CAN SUBSTANTIALLY OR IRRETRIEVABLY AFFECT THE SIGNIFICANCE OF THE HERITAGE PROPERTY.— Nevertheless, the Venice Charter and the NHCP Guidelines, along with various conservation conventions, recommendations, and resolutions contained in multilateral cooperation and agreements by State and non-state entities, do establish a significant fact: **At the time of the enactment of our Constitution in 1987, there has already been a *consistent* understanding of the term "conservation" in the culture, history, and heritage context as to cover not only a heritage property's physical/tangible attributes, but also its settings (*e.g.*, its surrounding neighborhood, landscapes, sites, sight lines, skylines, visual corridors, and vista points).** The setting of a heritage structure, site, or area is defined as "the immediate and extended environment that is part of, or contributes to, its significance and distinctive character." It is also referred to as "the surroundings in which a place is experienced, its local context, embracing present and past relationships to the adjacent landscape." It is further acknowledged as one of the sources from which heritage structures, sites, and areas "derive their significance and distinctive character." Thus, any change to the same can "substantially or irretrievably affect" the significance of the heritage property.

9. ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; ZONING ORDINANCE; CARRIES WITH IT THE PRESUMPTION OF VALIDITY; ORDINANCE NO. 8119 IS PRESUMPTIVELY VALID AND MUST BE APPLIED.— Republic Act No. 7160, otherwise known as the Local Government Code, vests local government units with the powers to enact ordinances to promote the general welfare x x x. It also provides that zoning ordinances serve as the primary and dominant bases for the use of land resources. These are enacted by the local legislative council as part of their power and duty to promote general welfare, which includes the division of a municipality/city into districts of such number, shape, and area

as may be deemed best suited to carry out the stated purposes, and within such districts "regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied x x x." Ordinance No. 8119 is a general zoning ordinance similar to the one upheld by the United States Supreme Court in the case of *Village of Euclid v. Ambler Realty Co.* as a valid exercise of police power. x x x. This Court has similarly validated the constitutionality of zoning ordinances in this jurisdiction. In *Victorias Milling Co., Inc. v. Municipality of Victorias, Negros Occidental*, we held that an ordinance carries with it the presumption of validity. In any case, the validity of Ordinance No. 8119, while subsequently raised by petitioner KOR as an issue, can be challenged only in a direct action and not collaterally. While the question of its reasonableness may still be subject to a possible judicial inquiry in the future, Ordinance No. 8119 is presumptively valid and must be applied.

10. ID.; ID.; ID.; ID.; ORDINANCE NO. 8119, BY ITS TERMS, CONTAINS SPECIFIC, OPERABLE NORMS AND STANDARDS THAT IMPLEMENT THE CONSTITUTIONAL MANDATE TO CONSERVE HISTORICAL AND CULTURAL HERITAGE AND RESOURCES AND PROTECT "VIEWS" WITH HIGH SCENIC QUALITY.— Ordinance No. 8119, *by its terms*, contains specific, operable norms and standards that implement the constitutional mandate to conserve historical and cultural heritage and resources. **A plain reading of the Ordinance would show that it sets forth specific historical preservation and conservation standards which *textually* reference "landscape and streetscape," and "visual character" in specific relation to the conservation of historic sites and facilities located within the City of Manila.** x x x. Section 47, *by its terms*, provides the standards by which to "guide the development of historic sites and facilities," which include, among others, consideration of the "existing landscape, streetscape and visual character" of heritage properties and resources. x x x. Ordinance No. 8119 contains *another* provision that declares it in "the public interest" that all projects be designed in an "aesthetically pleasing" manner. It makes express and specific reference to "existing and intended character of [a] neighborhood," "natural environmental character" of its neighborhood, and "skyline," among others. Section 48 mandates consideration of skylines

as well as "the existing and intended character of the neighborhood" where the proposed facility is to be located x x x. Finally, Ordinance No. 8119, *by its terms*, contains specific operable norms and standards that protect "views" with "high scenic quality," **separately and independently** of the historical preservation, conservation, and aesthetic standards discussed under Sections 47 and 48. Sections 45 and 53 obligate the City of Manila to protect views of "high scenic quality" which are the objects of "public enjoyment," under explicit "environmental conservation and protection standards."

11. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; WHILE A WRIT OF *MANDAMUS* GENERALLY ONLY ISSUES TO COMPEL THE PERFORMANCE OF A MINISTERIAL DUTY, WHERE THERE IS A NEGLECT OR FAILURE ON THE PART OF THE CITY TO CONSIDER THE STANDARDS AND REQUIREMENTS SET FORTH UNDER THE LAW AND ITS OWN COMPREHENSIVE LAND USE PLAN AND ZONING ORDINANCE, *MANDAMUS* MAY LIE TO COMPEL IT TO CONSIDER THE SAME FOR PURPOSES OF THE EXERCISE OF THE CITY'S DISCRETIONARY POWER TO ISSUE PERMITS.— Generally, the writ of *mandamus* is not available to control discretion nor compel the exercise of discretion. The duty is ministerial only when its discharge requires neither the exercise of official discretion nor judgment. Indeed, the issuance of permits *per se* is not a ministerial duty on the part of the City. This act involves the exercise of judgment and discretion by the CPDO who must determine whether a project should be approved in light of many considerations, not excluding its possible impact on any protected cultural property, based on the documents to be submitted before it. Performance of a duty which involves the exercise of discretion may, however, be compelled by *mandamus* in cases where there is grave abuse of discretion, manifest injustice, or palpable excess of authority. In *De Castro v. Salas*, a writ of *mandamus* was issued against a lower court which refused to go into the merits on an action "upon an **erroneous view of the law or practice**." x x x [The] provisions of Ordinance No. 8119 set out clear duties on the part of public respondent City of Manila for purposes of resolving whether the Torre de Manila construction project should be allowed and that the City, by reason of a mistaken or erroneous

construction of its own Ordinance, had failed to consider its duties under this law when it issued permits in DMCI-PDI's favor. Thus, while a writ of *mandamus* generally only issues to compel the performance of a ministerial duty, where, as in this case, there is a neglect or failure on the part of the City to consider the standards and requirements set forth under the law and its own comprehensive land use plan and zoning ordinance, *mandamus* may lie to compel it to consider the same for purposes of the exercise of the City's discretionary power to issue permits.

12. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; ZONING ORDINANCE; THE STANDARDS AND REQUIREMENTS UNDER ORDINANCE NO. 8119 MUST BE CONSIDERED BY THE CITY OF MANILA IN RELATION TO THE APPLICATION OF PRIVATE RESPONDENT TO CONSTRUCT THE TORRE DE MANILA PROJECT.— Ordinance No. 8119 contains three provisions which, *by their terms*, must be considered in relation to the determination by the City of Manila of the issue of whether the Torre de Manila condominium project should be allowed to stand as is. Article VII (Performance Standards) of Ordinance No. 8119 provides the standards under which "[a]ll land uses, developments or constructions *shall* conform to x x x." The Ordinance itself provides that in the construction or interpretation of its provisions, "the term 'shall' is always mandatory." These standards, placed in the Ordinance for specific, if not already expressed, reasons must be seriously considered for purposes of issuance of building permits by the City of Manila. Sections 43 in relation to 53, and 47 and 48, however, were not considered by the City of Manila when it decided to grant the different permits applied for by DMCI-PDI. x x x. The standards and requirements under Ordinance No. 8119 were included in the law to ensure that any proposed development to be approved be mindful of the numerous public welfare considerations involved. **Ordinance No. 8119 being the primary and dominant basis for all uses of land resources within the locality, the City of Manila, through the CPDO, knows or ought to know the existence of these standards and ought to have considered the same in relation to the application of DMCI-PDI to construct the Torre de Manila project.**

13. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; THE COURT, WITHOUT OFFENDING ITS BOUNDEN DUTY TO INTERPRET THE LAW AND ADMINISTER JUSTICE, SHOULD NOT PERMIT A DISREGARD OF AN ORDINANCE BY DIMINISHING THE DUTY IMPOSED BY CONGRESS, THROUGH THE LOCAL LEGISLATURE, TO EFFECTUATE THE GENERAL WELFARE OF THE CITIZENS OF THE CITY OF MANILA.— The City of Manila may have been of the honest belief that there was no law which requires it to regulate developments within the locality following the standards under Sections 45, 47, and 48. Still, the Court, without offending its bounden duty to interpret the law and administer justice, should not permit a disregard of an Ordinance by diminishing the duty imposed by Congress, through the local legislature, to effectuate the general welfare of the citizens of the City of Manila. The protection of general welfare for all citizens through the protection of culture, health and safety, among others, is "an ambitious goal but over time, x x x something that is attainable." [S]uch mandate is as much addressed to this Court, as it is to the other branches of Government.

14. ID.; ID.; ID.; ID.; THE ENFORCEMENT OF THE ORDINANCE IS A PUBLIC DUTY, NOT ONLY MINISTERIAL, THE PERFORMANCE OF WHICH IS ENFORCEABLE BY A WRIT OF *MANDAMUS*; THE WRIT OF *MANDAMUS* WOULD NOT BE TO DIRECT THE CITY OF MANILA TO EXERCISE ITS DISCRETION IN ONE WAY OR ANOTHER, BUT MERELY TO COMPEL THE CITY OF MANILA TO CONSIDER THE STANDARDS SET OUT UNDER ORDINANCE NO. 8119 IN RELATION TO THE TORRE DE MANILA PROJECT.— Under Section 75 of Ordinance No. 8119, responsibility for the administration and enforcement of the same shall be with the City Mayor, through the CPDO. For as long as it has not been repealed by the local *sanggunian* or annulled by the courts, Ordinance No. 8119 must be enforced. The City of Manila cannot simply, and without due justification, disregard its obligations under the law and its own zoning ordinance. Officers of the government from the highest to the lowest are creatures of the law and are bound to obey it. In this *specific* sense, enforcement of the ordinance has been held

to be a public duty, not only ministerial, the performance of which is enforceable by a writ of *mandamus*. [T]he Court would **not** be directing the City of Manila to exercise its discretion in one way or another. That is not the province of a writ of *mandamus*. [T]he writ of *mandamus* issued in this case merely compel the City of Manila, through the CPDO, to *consider* the standards set out under Ordinance No. 8119 in relation to the applications of DMCI-PDI for its Torre de Manila project. It may well be that the City of Manila, *after exercising its discretion*, finds that the Torre de Manila meets any or all of the standards under the Ordinance. The Court will not presume to preempt the action of the City of Manila, through the CPDO, when it re-evaluates DMCI-PDI's application with particular consideration to the guidelines provided under the standards.

15. ID.; ID.; ID.; ID.; RE-EVALUATION BY THE CITY OF MANILA, OF THE PERMITS PREVIOUSLY ISSUED IN FAVOR OF THE TORRE DE MANILA PROJECT TO DETERMINE COMPLIANCE WITH THE STANDARDS/REQUIREMENTS UNDER ORDINANCE NO. 8119, PROPOSED.— To clarity, [It is] not proposed that the Court rule on the legality or propriety of the variance granted to DMCI-PDI under Section 60. Rather, x x x the ruling be limited thus: the City of Manila must *consider* whether DMCI-PDI's proposed project meets the definition and conditions of a "unique" property under Section 60, standing alone by the terms of Section 60, but also *in relation* to the heritage, environmental, and aesthetic standards of Sections 45, 53, 47 and 48. Without controlling *how* its discretion will thereafter be exercised, x x x the Court to direct the **re-evaluation** by the City of Manila, through the CPDO, of the permits previously issued in favor of the Torre de Manila project, including conducting a hearing, receiving evidence, and deciding compliance with the foregoing standards/requirements under Ordinance No. 8119.

16. ID.; ID.; ID.; CASE AT BAR SHOULD BE REMANDED TO THE CITY OF MANILA PROPER.— The constitutional guarantee of due process dictates that parties be given an opportunity to be heard before judgment is rendered. Here, the parties were not heard on the specific subject of the performance standards prescribed by Ordinance No. 8119, insofar as they appear relevant to this case. A remand would have been the

just course of action. x x x. A remand would have allowed for the building of a factual foundation of record with respect to underlying questions of fact (and even policy) not appropriate to be decided, in the first instance, by the Court. [A] remand would provide the opportune venue to hear and receive evidence over alternate/moderate views, including, the maximum number of storeys the Torre de Manila may be allowed that would pose minimal deviation from the prescribed LUICs and still be considered consistent with the other performance standards under the Ordinance. Furthermore, [a] **finding *at this point* that the standards provided under Ordinance No. 8119 are not applicable does more to preempt the City of Manila in the exercise of its discretion than an order requiring it to *merely consider* their application**. This, despite clear indications that they have not been considered at all during the processing of DMCI-PDI's application. That the City of Manila has not considered these standards is a finding of fact that the Court can make because this was **admitted** as much by the local government itself when, based on its erroneous reading of its own zoning ordinance, it claimed that there is no law which regulates constructions alleged to have impaired the sightlines of a historical site/facility. [A] remand would, at the very least, allow the City of Manila to consider and settle, at the first instance, the matter of whether the Sections in question are applicable or not.

APPEARANCES OF COUNSEL

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Jose Alberto C. Flaminiano and *Luis Y. Del Mundo, Jr.,* for City of Manila.
Jose Manuel I. Diokno and *Jose Y. Dalisay III* for NHCP.

D E C I S I O N

CARPIO, *J.*:

Bury me in the ground, place a stone and a cross over it.
My name, the date of my birth, and of my death. Nothing more.
If you later wish to surround my grave with a fence, you may do so.
No anniversaries. I prefer Paang Bundok.

– *Jose Rizal*

The Case

Before this Court is a Petition for Injunction, with Applications for Temporary Restraining Order, Writ of Preliminary Injunction, and Others[1] filed by the Knights of Rizal (KOR) seeking, among others, for an order to stop the construction of respondent DMCI Homes, Inc.'s condominium development project known as the Torre de Manila. In its Resolution dated 25 November 2014, the Court resolved to treat the petition as one for mandamus.[2]

The Facts

On 1 September 2011, DMCI Project Developers, Inc. (DMCI-PDI)[3] acquired a 7,716.60-square meter lot in the City of Manila, located near Taft Avenue, Ermita, beside the former Manila Jai-Alai Building and Adamson University.[4] The lot was earmarked for the construction of DMCI-PDI's Torre de Manila condominium project.

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[1] *Rollo*, Vol. I, pp. 3-28.

[2] *Id*. at 418-C-418-D.

[3] In a Manifestation dated 14 October 2014, DMCI-PDI informed the Court that it is the owner and developer of the Torre de Manila project and requested to substitute for DMCI Homes, Inc. as respondent in this case. *Id*. at 240-242.

The Court, in its 11 November 2014 Resolution, resolved to implead DMCI-PDI as respondent in this case. *Id*. at 281-282.

[4] *Id*. at 300.

On 2 April 2012, DMCI-PDI secured its Barangay Clearance to start the construction of its project. It then obtained a Zoning Permit from the City of Manila's City Planning and Development Office (CPDO) on 19 June 2012.[5]

Then, on 5 July 2012, the City of Manila's Office of the Building Official granted DMCI-PDI a Building Permit, allowing it to build a "Forty- Nine (49) Storey w/ Basement & 2 penthouse Level Res'l./Condominium" on the property.[6]

On 24 July 2012, the City Council of Manila issued Resolution No. 121 enjoining the Office of the Building Official to temporarily suspend the Building Permit of DMCI-PDI, citing among others, that "the Torre de Manila Condominium, based on their development plans, upon completion, will rise up high above the back of the national monument, to clearly dwarf the statue of our hero, and with such towering heights, would certainly ruin the line of sight of the Rizal Shrine from the frontal Roxas Boulevard vantage point[.]"[7]

Building Official Melvin Q. Balagot then sought the opinion of the City of Manila's City Legal Officer on whether he is bound to comply with Resolution No. 121.[8] In his letter dated 12 September 2012, City Legal Officer Renato G. Dela Cruz stated that there is "no legal justification for the temporary suspension of the Building Permit issued in favor of [DMCI-PDI]" since the construction "lies outside the Luneta Park" and is "simply too far to be a repulsive distraction or have an objectionable effect on the artistic and historical significance" of the Rizal Monument.[9] He also pointed out that "there is no showing that the [area of] subject property has been officially declared as an anthropological or archeological area. Neither has it been categorically designated by the National Historical

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[5] *Id*. at 301.

[6] *Id*. at 376.

[7] *Rollo,* Vol. III, pp. 1371-1373.

[8] *Id*. at 1374.

[9] *Id*. at 1375-1376.

Institute as a heritage zone, a cultural property, a historical landmark or even a national treasure."

Subsequently, both the City of Manila and DMCI-PDI sought the opinion of the National Historical Commission of the Philippines (NHCP) on the matter. In the letter[10] dated 6 November 2012 from NHCP Chairperson Dr. Maria Serena I. Diokno addressed to DMCI-PDI and the letter[11] dated 7 November 2012 from NHCP Executive Director III Ludovico D. Badoy addressed to then Manila Mayor Alfredo S. Lim, the NHCP maintained that the Torre de Manila project site is outside the boundaries of the Rizal Park and well to the rear of the Rizal Monument, and thus, cannot possibly obstruct the frontal view of the National Monument.

On 26 November 2013, following an online petition against the Torre de Manila project that garnered about 7,800 signatures, the City Council of Manila issued Resolution No. 146, reiterating its directive in Resolution No. 121 enjoining the City of Manila's building officials to temporarily suspend DMCI-PDI's Building Permit.[12]

In a letter to Mayor Joseph Ejercito Estrada dated 18 December 2013, DMCI-PDI President Alfredo R. Austria sought clarification on the controversy surrounding its Zoning Permit. He stated that since the CPDO granted its Zoning Permit, DMCI-PDI continued with the application for the Building Permit, which was granted, and did not deem it necessary to go through the process of appealing to the local zoning board. He then expressed DMCI-PDI's willingness to comply with the process if the City of Manila deemed it necessary.[13]

On 23 December 2013, the Manila Zoning Board of Adjustments and Appeals (MZBAA) issued Zoning Board

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[10] *Rollo*, Vol. I, pp. 404-405.

[11] *Rollo*, Vol. III, p. 1377.

[12] *Id.* at 1381-1383.

[13] *Id.* at 1384-1385.

Resolution No. 06, Series of 2013,[14] recommending the approval of DMCI-PDI's application for variance. The MZBAA noted that the Torre de Manila project "exceeds the prescribed maximum Percentage of Land Occupancy (PLO) and exceeds the prescribed Floor Area Ratio (FAR) as stipulated in Article V, Section 17 of City Ordinance No. 8119[.]" However, the MZBAA still recommended the approval of the variance subject to the five conditions set under the same resolution.

After some clarification sought by DMCI-PDI, the MZBAA issued Zoning Board Resolution No. 06-A, Series of 2013,[15] on 8 January 2014, amending condition (c) in the earlier resolution.[16]

On 16 January 2014, the City Council of Manila issued Resolution No. 5, Series of 2014,[17] adopting Zoning Board Resolution Nos. 06 and 06-A. The City Council resolution states that "the City Council of Manila find[s] no cogent reason to deny and/or reverse the aforesaid recommendation of the [MZBAA] and hereby ratif[ies] and confirm[s] all previously issued permits, licenses and approvals issued by the City [Council] of Manila for Torre de Manila[.]"

Arguments of the KOR

On 12 September 2014, the KOR, a "civic, patriotic, cultural, non-partisan, non-sectarian and non-profit organization"[18] created

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[14] *Id*. at 1386-1387.

[15] *Id*. at 1388-1389.

[16] Condition (c) in the 23 December 2013 resolution reads:

(c) The Project shall continuously be socially acceptable to the Barangay Council and nearby residents by assuring that its operations shall not adversely affect the community heritage, traffic condition, public health, safety and welfare x x x. *Id*. at 1387.

It was amended in the 8 January 2014 resolution to read:

(c) The proponent shall ensure that its operations shall not adversely affect community heritage, traffic condition, public health, safety and welfare x x x. *Id*. at 1389.

[17] *Rollo*, Vol. III, pp. 1390-1392.

[18] *Rollo*, Vol. I, p. 5.

under Republic Act No. 646,[19] filed a Petition for Injunction seeking a temporary restraining order, and later a permanent injunction, against the construction of DMCI-PDI's Torre de Manila condominium project. The KOR argues that the subject matter of the present suit is one of "transcendental importance, paramount public interest, of overarching significance to society, or with far- reaching implication" involving the desecration of the Rizal Monument.

The KOR asserts that the completed Torre de Manila structure will "[stick] out like a sore thumb, [dwarf] all surrounding buildings within a radius of two kilometer/s" and "forever ruin the sightline of the Rizal Monument in Luneta Park: Torre de Manila building would loom at the back and overshadow the entire monument, whether up close or viewed from a distance."[20]

Further, the KOR argues that the Rizal Monument, as a National Treasure, is entitled to "full protection of the law"[21] and the national government must abate the act or activity that endangers the nation's cultural heritage "even against the wishes of the local government hosting it."[22]

Next, the KOR contends that the project is a nuisance *per se*[23] because "[t]he despoliation of the sight view of the Rizal Monument is a situation that 'annoys or offends the senses' of every Filipino who honors the memory of the National Hero Jose Rizal. It is a present, continuing, worsening and aggravating status or condition. Hence, the PROJECT is a nuisance *per se*. It deserves to be abated summarily, even without need of judicial proceeding."[24]

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[19] *Id*. at 4.

[20] *Id*. at 13.

[21] *Id*. at 16.

[22] *Id*. at 17.

[23] During the Oral Arguments on 21 July 2015, the counsel for the KOR asserted that the KOR has changed its position on the matter and now considers the Torre de Manila project a nuisance *per accidens.* TSN, 21 July 2015, p. 106.

[24] *Rollo*, Vol. I, p. 18.

The KOR also claims that the Torre de Manila project violates the NHCP's *Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages*, which state that historic monuments should assert a visual "dominance" over its surroundings,[25] as well as the country's commitment under the *International Charter for the Conservation and Restoration of Monuments and Sites*, otherwise known as the Venice Charter.[26]

Lastly, the KOR claims that the DMCI-PDI's construction was commenced and continues in bad faith, and is in violation of the City of Manila's zoning ordinance.[27]

Arguments of DMCI-PDI

In its Comment, DMCI-PDI argues that the KOR's petition should be dismissed on the following grounds:

I.
THIS HONORABLE COURT HAS NO JURISDICTION OVER THIS ACTION.

II.
KOR HAS NO LEGAL RIGHT OR INTEREST TO FILE OR PROSECUTE THIS ACTION.

III
TORRE DE MANILA IS NOT A NUISANCE PER SE.

IV.
DMCI-PDI ACTED IN GOOD FAITH IN CONSTRUCTING TORRE DE MANILA; AND

V.
KOR IS NOT ENTITLED TO A TEMPORARY RESTRAINING ORDER AND/OR A WRIT OF PRELIMINARY INJUNCTION.[28]

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[25] *Id*. at 19.

[26] *Id*. at 20.

[27] *Id*. at 21.

[28] *Id*. at 307.

First, DMCI-PDI asserts that the Court has no original jurisdiction over actions for injunction.[29] Even assuming that the Court has concurrent jurisdiction, DMCI-PDI maintains that the petition should still have been filed with the Regional Trial Court under the doctrine of hierarchy of courts and because the petition involves questions of fact.[30]

DMCI-PDI also contends that the KOR's petition is in actuality an opposition or appeal from the exemption granted by the City of Manila's MZBAA, a matter which is also not within the jurisdiction of the Court.[31] DMCI-PDI claims that the proper forum should be the MZBAA, and should the KOR fail there, it should appeal the same to the Housing and Land Use Regulatory Board (HLURB).[32]

DMCI-PDI further argues that since the Rizal Monument has been declared a National Treasure, the power to issue a cease and desist order is lodged with the "appropriate cultural agency" under Section 25 of Republic Act No. 10066 or the *National Cultural Heritage Act of 2009*.[33] Moreover, DMCI-PDI asserts that the KOR availed of the wrong remedy since an action for injunction is not the proper remedy for abatement of a nuisance.[34]

Second, DMCI-PDI maintains that the KOR has no standing to institute this proceeding because it is not a real party in interest in this case. The purposes of the KOR as a public corporation do not include the preservation of the Rizal Monument as a cultural or historical heritage site.[35] The KOR has also not shown that it suffered an actual or threatened injury as a result of the

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[29] *Id*. at 308.

[30] *Id*. at 311-312.

[31] *Id*. at 314.

[32] *Id*. at 315.

[33] *Id*. at 317.

[34] *Id*. at 318.

[35] *Id*. at 320.

alleged illegal conduct of the City of Manila. If there is any injury to the KOR at all, the same was caused by the private conduct of a private entity and not the City of Manila.[36]

Third, DMCI-PDI argues that the Torre de Manila is not a nuisance *per se*. DMCI-PDI reiterates that it obtained all the necessary permits, licenses, clearances, and certificates for its construction.[37] It also refutes the KOR's claim that the Torre de Manila would dwarf all other structures around it, considering that there are other tall buildings even closer to the Rizal Monument itself, namely, the Eton Baypark Tower at the corner of Roxas Boulevard and T.M. Kalaw Street (29 storeys; 235 meters from the Rizal Monument) and Sunview Palace at the corner of M.H. Del Pilar and T.M. Kalaw Streets (42 storeys; 250 meters from the Rizal Monument).[38]

Fourth, DMCI-PDI next argues that it did not act in bad faith when it started construction of its Torre de Manila project. Bad faith cannot be attributed to it since it was within the "lawful exercise of [its] rights."[39] The KOR failed to present any proof that DMCI-PDI did not follow the proper procedure and zoning restrictions of the City of Manila. Aside from obtaining all the necessary permits from the appropriate government agencies,[40] DMCI-PDI also sought clarification on its right to build on its site from the Office of the City Legal Officer of Manila, the Manila CPDO, and the NHCP.[41] Moreover, even if the KOR proffered such proof, the Court would be in no position to declare DMCI-PDI's acts as illegal since the Court is not a trier of facts.[42]

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[36] *Id*. at 321.

[37] *Id*. at 329.

[38] *Id*.

[39] *Id*. at 338.

[40] *Id*. at 336.

[41] *Id*. at 337.

[42] *Id*. at 339.

Finally, DMCI-PDI opposes the KOR's application for a Temporary Restraining Order (TRO) and writ of preliminary injunction. DMCI-PDI asserts that the KOR has failed to establish "a clear and unmistakable right to enjoin the construction of Torre de Manila, much less request its demolition."[43] DMCI-PDI further argues that it "has complied with all the legal requirements for the construction of Torre de Manila x x x [and] has violated no right of KOR that must be protected. Further, KOR stands to suffer no damage because of its lack of direct pecuniary interest in this petition. To grant the KOR's application for injunctive relief would constitute an unjust taking of property without due process of law."[44]

Arguments of the City of Manila

In its Comment, the City of Manila argues that the writ of mandamus cannot issue "considering that no property or substantive rights whatsoever in favor of [the KOR] is being affected or x x x entitled to judicial protection[.]"[45]

The City of Manila also asserts that the "issuance and revocation of a Building Permit undoubtedly fall under the category of a discretionary act or duty performed by the proper officer in light of his meticulous appraisal and evaluation of the pertinent supporting documents of the application in accordance with the rules laid out under the National Building Code [and] Presidential Decree No. 1096,"[46] while the remedy of mandamus is available only to compel the performance of a ministerial duty.[47]

Further, the City of Manila maintains that the construction of the Torre de Manila did not violate any existing law, since the "edifice [is] well behind (some 789 meters away) the line

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[43] *Id*. at 346.

[44] *Id*. at 346-347.

[45] *Id*. at 434.

[46] *Id*.

[47] *Id*. at 433.

of sight of the Rizal Monument."[48] It adds that the City of Manila's "prevailing Land Use and Zoning Ordinance [Ordinance No. 8119] x x x allows an adjustment in Floor Area Ratios thru the [MZBAA] subject to further final approval of the City Council."[49] The City Council adopted the MZBAA's favorable recommendation in its Resolution No. 5, ratifying all the licenses and permits issued to DMCI-PDI for its Torre de Manila project.

In its Position Paper dated 15 July 2015, the City of Manila admitted that the Zoning Permit issued to DMCI-PDI was "in breach of certain provisions of City Ordinance No. 8119."[50] It maintained, however, that the deficiency is "procedural in nature and pertains mostly to the failure of [DMCI-PDI] to comply with the stipulations that allow an excess in the [FAR] provisions."[51] Further, the City of Manila argued that the MZBAA, when it recommended the allowance of the project's variance, imposed certain conditions upon the Torre de Manila project in order to mitigate the possible adverse effects of an excess FAR.[52]

The Issue

The issues raised by the parties can be summed up into one main point: Can the Court issue a writ of mandamus against the officials of the City of Manila to stop the construction of DMCI-PDI's Torre de Manila project?

The Court's Ruling

The petition for mandamus lacks merit and must be dismissed.

There is no law prohibiting the construction of the Torre de Manila.

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[48] *Id*. at 434.

[49] *Id*. at 436.

[50] *Rollo,* Vol. III, p. 1363.

[51] *Id*.

[52] *Id*. at 1365.

In *Manila Electric Company v. Public Service Commission*,[53] the Court held that "**what is not expressly or impliedly prohibited by law may be done, except when the act is contrary to morals, customs and public order**." This principle is fundamental in a democratic society, to protect the weak against the strong, the minority against the majority, and the individual citizen against the government. In essence, this principle, which is the foundation of a civilized society under the rule of law, prescribes that the freedom to act can be curtailed only through law. Without this principle, the rights, freedoms, and civil liberties of citizens can be arbitrarily and whimsically trampled upon by the shifting passions of those who can shout the loudest, or those who can gather the biggest crowd or the most number of Internet trolls. In other instances,[54] the Court has allowed or upheld actions that were not expressly prohibited by statutes when it determined that these acts were not contrary to morals, customs, and public order, or that upholding the same would lead to a more equitable solution to the controversy. However, it is the law itself – Articles 1306[55] and 1409(1)[56] of the Civil Code – which prescribes that acts not contrary to morals, good customs, public order, or public policy are allowed if also not contrary to law.

In this case, there is no allegation or proof that the Torre de Manila project is "contrary to morals, customs, and public order" or that it brings harm, danger, or hazard to the community. On

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[53] 60 Phil. 658, 661 (1934).

[54] See *In the Matter of the Adoption of Stephanie Nathy Astroga Garcia*, 494 Phil. 515 (2005); *Summerville General Merchandising Co. v. Court of Appeals,*552 Phil. 668 (2007).

[55] Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

[56] Art. 1409. The following contracts are inexistent and void from the beginning:

> (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;

the contrary, the City of Manila has determined that DMCI-PDI complied with the standards set under the pertinent laws and local ordinances to construct its Torre de Manila project.

There is one fact that is crystal clear in this case. There is no law prohibiting the construction of the Torre de Manila due to its effect on the **background** "view, vista, sightline, or setting" of the Rizal Monument.

Zoning, as well as land use, in the City of Manila is governed by Ordinance No. 8119. The ordinance provides for standards and guidelines to regulate development projects of historic sites and facilities within the City of Manila.

Specifically, Section 47 reads:

SEC. 47. Historical Preservation and Conservation Standards. – Historic sites and facilities shall be conserved and preserved. These shall, to the extent possible, be made accessible for the educational and cultural enrichment of the general public.

The following shall **guide the development of historic sites and facilities**:

1. Sites with historic buildings or places shall be developed to conserve and enhance their heritage values.

2. Historic sites and facilities shall be adaptively re-used.

3. Any person who proposes to add, to alter, or partially demolish a designated heritage property will require the approval of the City Planning and Development Office (CPDO) and shall be required to prepare a heritage impact statement that will demonstrate to the satisfaction of CPDO that the proposal will not adversely impact the heritage significance of the property and shall submit plans for review by the CPDO in coordination with the National Historical Institute (NHI).

4. Any proposed alteration and/or re-use of designated heritage properties shall be evaluated based on criteria established by the heritage significance of the particular property or site.

5. Where an owner of a heritage property applies for approval to demolish a designated heritage property or properties, the owner shall be required to provide evidence to satisfaction that demonstrates that rehabilitation and re-use of the property is not viable.

6. Any designated heritage property which is to be demolished or significantly altered shall be thoroughly documented for archival

purposes with a history, photographic records, and measured drawings, in accordance with accepted heritage recording guidelines, prior to demolition or alteration.

7. Residential and commercial infill in heritage areas will be sensitive to the existing scale and pattern of those areas, which maintains the existing landscape and streetscape qualities of those areas, and which does not result in the loss of any heritage resources.

8. Development plans shall ensure that parking facilities (surface lots, residential garages, stand-alone parking garages and parking components as parts of larger developments) are compatibly integrated into heritage areas, and/or are compatible with adjacent heritage resources.

9. Local utility companies (hydro, gas, telephone, cable) shall be required to place metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless telecommunication towers and other utility equipment and devices in locations which do not detract from the visual character of heritage resources, and which do not have a negative impact on its architectural integrity.

10. Design review approval shall be secured from the CPDO for any alteration of the heritage property to ensure that design guidelines and standards are met and shall promote preservation and conservation of the heritage property. (Emphasis supplied)

It is clear that the standards laid down in Section 47 of Ordinance No. 8119 only serve as guides, as it expressly states that "the following shall **guide** the development of historic sites and facilities." A guide simply sets a direction or gives an instruction to be followed by property owners and developers in order to conserve and enhance a property's heritage values.

On the other hand, Section 48 states:

SEC. 48. Site Performance Standards. – The City considers it in the public interest that all projects are designed and developed in a safe, efficient and aesthetically pleasing manner. Site development shall consider the environmental character and limitations of the site and its adjacent properties. All project elements shall be in complete harmony according to good design principles and the subsequent development must be visually pleasing as well as efficiently functioning especially in relation to the adjacent properties and bordering streets.

The design, construction, operation and maintenance of every facility shall be in harmony with the existing and intended character

of its neighborhood. It shall not change the essential character of the said area but will be a substantial improvement to the value of the properties in the neighborhood in particular and the community in general.

Furthermore, designs should consider the following:

1. Sites, buildings and facilities shall be designed and developed with regard to safety, efficiency and high standards of design. The natural environmental character of the site and its adjacent properties shall be considered in the site development of each building and facility.

2. The height and bulk of buildings and structures shall be so designed that it does not impair the entry of light and ventilation, cause the loss of privacy and/or create nuisances, hazards or inconveniences to adjacent developments.

3. Abutments to adjacent properties shall not be allowed without the neighbor's prior written consent which shall be required by the City Planning and Development Office (CPDO) prior to the granting of a Zoning Permit (Locational Clearance).

4. The capacity of parking areas/lots shall be per the minimum requirements of the National Building Code. These shall be located, developed and landscaped in order to enhance the aesthetic quality of the facility. In no case, shall parking areas/lots encroach into street rights-of-way and shall follow the Traffic Code as set by the City.

5. Developments that attract a significant volume of public modes of transportation, such as tricycles, jeepneys, buses, etc., shall provide on-site parking for the same. These shall also provide vehicular loading and unloading bays so as street traffic flow will not be impeded.

6. Buffers, silencers, mufflers, enclosures and other noise-absorbing materials shall be provided to all noise and vibration-producing machinery. Noise levels shall be maintained according to levels specified in DENR DAO No. 30 – Abatement of Noise and Other Forms of Nuisance as Defined by Law.

7. Glare and heat from any operation or activity shall not be radiated, seen or felt from any point beyond the limits of the property.

8. **No large commercial signage and/or pylon, which will be detrimental to the skyline, shall be allowed**.

9. Design guidelines, deeds of restriction, property management plans and other regulatory tools that will ensure high quality developments shall be required from developers of commercial subdivisions and condominiums. These shall be submitted to the City

Planning and Development Office (CPDO) for review and approval. (Emphasis supplied)

Section 47 of Ordinance No. 8119 specifically regulates the "**development of historic sites and facilities**." Section 48 regulates "**large commercial signage and/or pylon**." There is nothing in Sections 47 and 48 of Ordinance No. 8119 that disallows the construction of a **building outside the boundaries of a historic site or facility,** where such building may affect the background of a historic site. In this case, the Torre de Manila stands 870 meters outside and to the rear of the Rizal Monument and "cannot possibly obstruct the front view of the [Rizal] Monument."[57] Likewise, the Torre de Manila is not in an area that has been declared as an "anthropological or archeological area" or in an area designated as a heritage zone, cultural property, historical landmark, or a national treasure by the NHCP.[58]

Section 15, Article XIV of the Constitution, which deals with the subject of arts and culture, provides that "[t]he State shall conserve, promote and popularize the nation's historical and cultural heritage and resources x x x." Since this provision is not self-executory, Congress passed laws dealing with the preservation and conservation of our cultural heritage.

One such law is Republic Act No. 10066,[59] or the *National Cultural Heritage Act of 2009*, which empowers the National Commission for Culture and the Arts and other cultural agencies to issue a cease and desist order "when the **physical integrity** of the national cultural treasures or important cultural properties [is] found to be **in danger of destruction or significant alteration from its original state**."[60] This law declares that

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[57] *Rollo,* Vol. III, p. 1377.

[58] *Id.* at 1376.

[59] *An Act Providing for the Protection and Conservation of the National Cultural Heritage, Strengthening the National Commission for Culture and the Arts (NCCA) and its Affiliated Cultural Agencies, and for Other Purposes*. Approved on 26 March 2010.

[60] Section 25, Republic Act No. 10066.

the State should protect the "**physical integrity**" of the heritage property or building if there is "danger of destruction or significant alteration from its original state." **Physical integrity refers to the structure itself – how strong and sound the structure is**. The same law does not mention that **another** project, building, or property, not itself a heritage property or building, may be the subject of a cease and desist order when it adversely affects the background view, vista, or sightline of a heritage property or building. Thus, Republic Act No. 10066 cannot apply to the Torre de Manila condominium project.

Mandamus does not lie against the City of Manila.

The Constitution states that "[n]o person shall be deprived of life, liberty or property without due process of law x x x."[61] It is a fundamental principle that no property shall be taken away from an individual without due process, whether substantive or procedural. The dispossession of property, or in this case the stoppage of the construction of a building in one's own property, would violate substantive due process.

The Rules on Civil Procedure are clear that mandamus only issues when there is a clear legal duty imposed upon the office or the officer sought to be compelled to perform an act, and when the party seeking mandamus has a clear legal right to the performance of such act.

In the present case, nowhere is it found in Ordinance No. 8119 or in any law, ordinance, or rule for that matter, that the construction of a building **outside** the Rizal Park is prohibited if the building is within the background sightline or view of the Rizal Monument. Thus, there is no legal duty on the part of the City of Manila "**to consider**," in the words of the Dissenting Opinion, "**the standards set under Ordinance No. 8119**" in relation to the applications of DMCI-PDI for the Torre de Manila since under the ordinance **these standards can never be applied outside the boundaries of Rizal Park.** While the Rizal Park has been declared a National Historical Site, the area where

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[61] Section 1, Article III, Constitution.

Torre de Manila is being built is a privately-owned property that is "not part of the Rizal Park that has been declared as a National Heritage Site in 1995," and the Torre de Manila area is in fact "well-beyond" the Rizal Park, according to NHCP Chairperson Dr. Maria Serena I. Diokno.[62] Neither has the area of the Torre de Manila been designated as a "heritage zone, a cultural property, a historical landmark or even a national treasure."[63]

Also, to declare that the City of Manila failed to consider the standards under Ordinance No. 8119 would involve making a finding of fact. A finding of fact requires notice, hearing, and the submission of evidence to ascertain compliance with the law or regulation. In such a case, it is the Regional Trial Court which has the jurisdiction to hear the case, receive evidence, make a proper finding of fact, and determine whether the Torre de Manila project properly complied with the standards set by the ordinance. In *Meralco v. Public Service Commission*,[64] we held that it is the cardinal right of a party in trials and administrative proceedings to be heard, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof and to have such evidence presented considered by the proper court or tribunal.

To compel the City of Manila to consider the standards under Ordinance No. 8119 to the Torre de Manila project will be an empty exercise since these standards cannot apply outside of the Rizal Park – and the Torre de Manila is outside the Rizal Park. Mandamus will lie only if the officials of the City of Manila have a ministerial duty to consider these standards to buildings outside of the Rizal Park. There can be no such ministerial duty because these standards are not applicable to buildings outside of the Rizal Park.

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[62] TSN, 1 September 2015, p. 34.

[63] *Rollo,* Vol. III, p. 1376.

[64] 120 Phil. 321, 337 (1964).

The KOR also invokes this Court's exercise of its extraordinary *certiorari* power of review under Section 1, Article VIII[65] of the Constitution. However, this Court can only exercise its extraordinary *certiorari* power if the City of Manila, in issuing the required permits and licenses, **gravely abused its discretion amounting to lack or excess of jurisdiction**. Tellingly, neither the majority nor minority opinion in this case has found that the City of Manila committed grave abuse of discretion in issuing the permits and licenses to DMCI-PDI. Thus, there is no justification at all for this Court to exercise its extraordinary *certiorari* power.

Moreover, the exercise of this Court's extraordinary *certiorari* power is limited to actual cases and controversies that necessarily involve a violation of the Constitution or the determination of the constitutionality or validity of a governmental act or issuance. Specific violation of a statute that does not raise the issue of constitutionality or validity of the statute cannot, as a rule, be the subject of the Court's direct exercise of its expanded *certiorari* power. Thus, the KOR's recourse lies with other judicial remedies or proceedings allowed under the Rules of Court.

In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*,[66] we held that in cases where the question of constitutionality of a governmental action is raised, the judicial power that the courts exercise is likewise identified as the *power of judicial review* – the power to review the constitutionality of the actions of other branches of government. As a rule, as required by the *hierarchy of courts principle*, these cases are filed with the

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[65] Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[66] G.R. No. 207132, 6 December 2016.

lowest court with jurisdiction over the subject matter. The judicial review that the courts undertake requires:

1) there be an actual case or controversy calling for the exercise of judicial power;
2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;
3) the question of constitutionality must be raised at the earliest possible opportunity; and
4) the issue of constitutionality must be the very *lis mota* of the case.

The lower court's decision under the constitutional scheme reaches the Supreme Court through the appeal process, through a petition for review on *certiorari* under Rule 45 of the Rules of Court.

In the present case, the KOR elevated this case immediately to this Court in an original petition for injunction which we later on treated as one for mandamus under Rule 65. There is, however, no clear legal duty on the City of Manila to consider the provisions of Ordinance No. 8119 for applications for permits to build **outside** the protected areas of the Rizal Park. Even if there were such legal duty, the determination of whether the City of Manila failed to abide by this legal duty would involve factual matters which have not been admitted or established in this case. Establishing factual matters is not within the realm of this Court. Findings of fact are the province of the trial courts.

There is no standard in Ordinance No. 8119 for defining or determining the background sightline that is supposed to be protected or that is part of the "physical integrity" of the Rizal Monument. How far should a building like the Torre de Manila be from the Rizal Monument – one, two, three, four, or five kilometers? Even the Solicitor General, during the Oral Arguments, conceded that the ordinance does not prescribe how sightline is determined, neither is there any way to measure by

metes and bounds whether a construction that is **not part of the historic monument itself or is outside the protected area** can be said to violate the Rizal Monument's **physical integrity**, except only to say "when you stand in front of the Rizal Monument, there can be no doubt that your view is marred and impaired." This kind of a standard has no parameters and can include a sightline or a construction as far as the human eyes can see when standing in front of the Rizal Monument. Obviously, this Court cannot apply such a subjective and non-uniform standard that adversely affects property rights several kilometers away from a historical sight or facility.

The Dissenting Opinion claims that "the City, by reason of a mistaken or erroneous construction of its own Ordinance, had failed to consider its duties under [Ordinance No. 8119] when it issued permits in DMCI-PDI's favor." However, MZBAA Zoning Board Resolution Nos. 06 and 06-A[67] easily dispel this claim. According to the resolutions, the City of Manila, through

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[67] *Rollo*, Vol. III, pp. 1386-1389.

Zoning Board Resolution No. 06, Series of 2013, 23 December 2013.

WHEREAS, Section 78 of the Ordinance No. 8119, otherwise known as the Manila Comprehensive Land Use Plan and Zoning Ordinance of 2006, mandates the Manila Zoning Board of Adjustments and Appeals (MZBAA) to act on the applications for zoning appeals on the following nature: variances, exceptions, non-conforming uses, complaints and oppositions;

WHEREAS, the City Planning and Development Office (CPDO) elevated the application for Zoning Appeal regarding the Special Use Permit of the above-captioned Project to the MZBAA in its Fourth Meeting held on December 23, 2013;

WHEREAS, the CPDO Evaluation Worksheet for Zoning Permit Processing reveals that the Project exceeds the prescribed maximum Percentage of Land Occupancy (PLO) and exceeds the prescribed Floor Area Ratio (FAR) as stipulated in Article V, Section 17 of City Ordinance No. 8119;

WHEREAS, the Owner requested for favorable endorsement to the City Council; x x x

WHEREAS, the Owner, Designer and Developer through their respective profiles present track record in the design, construction and operations/ management of similar projects[;] x x x

the MZBAA, acted on DMCI-PDI's application for variance under the powers and standards set forth in Ordinance No. 8119.

Without further proof that the MZBAA acted whimsically, capriciously, or arbitrarily in issuing said resolution, the Court should respect MZBAA's exercise of discretion. The Court cannot "substitute its judgment for that of said officials who are in a better position to consider and weigh the same in the light of the authority specifically vested in them by law."[68] Since the Court has "no supervisory power over the proceedings and actions of the administrative departments of the government," it "should not generally interfere with purely administrative and discretionary functions."[69] The power of the Court in mandamus petitions does not extend "**to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either**."[70]

Still, the Dissenting Opinion insists on directing the re-evaluation by the City of Manila, through the CPDO, of the

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WHEREAS, through Barangay Resolutions and an Affidavit, the Barangay Council together with the owners and residents of the adjacent surrounding properties interpose no objection; x x x

WHEREAS, through Certifications from respective utility companies, the supplies of water, power and communications are assured to be continuous and sufficient to the community vis-a-vis supplying the utility demands of the proposed Project; x x x

NOW, THEREFORE, the MZBAA, by virtue of the powers vested in us by law hereby RECOMMENDS APPROVAL FOR VARIANCE to the City Council of Manila, the herein Proposed Project, TORRE DE MANILA: 49-Storey High-Rise Residential Condominum located at TAFT AVENUE, ERMITA x x x.

x x x x x x x x x

[68] *Lianga Bay Logging Co., Inc. v. Enage*, 236 Phil. 84, 95 (1987).

[69] *Board of Medical Education v. Alfonso*, 257 Phil. 311, 321 (1989). Citations omitted.

[70] *Angchangco, Jr. v. Ombudsman*, 335 Phil. 766, 771-772 (1997). Emphasis supplied.

permits previously issued in favor of the Torre de Manila project to determine compliance with the standards under Ordinance No. 8119. It also declares that the circumstances in this case warrant the *pro hac vice* conversion of the proceedings in the issuance of the permits into a "contested case" necessitating notice and hearing with all the parties involved.

Pro hac vice means a specific decision does not constitute a precedent because the decision is for the specific case only, not to be followed in other cases. A *pro hac vice* decision violates statutory law — Article 8 of the Civil Code – which states that "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines." The decision of the Court in this case cannot be *pro hac vice* because by mandate of the law **every decision** of the Court forms part of the legal system of the Philippines. If another case comes up with the same facts as the present case, that case must be decided in the same way as this case to comply with the constitutional mandate of equal protection of the law. Thus, a *pro hac vice* decision also violates the equal protection clause of the Constitution.

It is the policy of the courts not to interfere with the discretionary executive acts of the executive branch unless there is a clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction. Mandamus does not lie against the legislative and executive branches or their members acting in the exercise of their official discretionary functions. This emanates from the respect accorded by the judiciary to said branches as co-equal entities under the principle of separation of powers.

In *De Castro v. Salas*,[71] we held that no rule of law is better established than the one that provides that mandamus will not issue to control the discretion of an officer or a court when honestly exercised and when such power and authority is not abused.

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[71] 34 Phil. 818, 823 (1916).

In exceptional cases, the Court has granted a prayer for mandamus to compel action in matters involving judgment and discretion, only "to act, but not to act one way or the other,"[72] and **only in cases where there has been a clear showing of grave abuse of discretion, manifest injustice, or palpable excess of authority**.[73]

In this case, there can be no determination by this Court that the City of Manila had been negligent or remiss in its duty under Ordinance No. 8119 considering that this determination will involve questions of fact. DMCI-PDI had been issued the proper permits and had secured all approvals and licenses months before the actual construction began. Even the KOR could not point to any law that respondent City of Manila had violated and could only point to declarations of policies by the NHCP and the Venice Charter which do not constitute clear legal bases for the issuance of a writ of mandamus.

The Venice Charter is merely a codification of guiding principles for the preservation and restoration of ancient monuments, sites, and buildings. It brings together principles in the field of historical conservation and restoration that have been developed, agreed upon, and and laid down by experts over the years. Each country, however, remains "responsible for applying the plan within the framework of its own culture and traditions."[74]

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[72] *M.A. Jimenez Enterprises, Inc. v. Ombudsman*, 665 Phil. 523, 540-541 (2011), citing *Albay Accredited Constructors Association, Inc. v. Desierto*, 516 Phil. 308, 326 (2006).

[73] See *Angchangco, Jr. v. Ombudsman*, *supra* note 70; *Kant Kwong v. PCGG*, 240 Phil. 219, 230 (1987).

[74] The Preamble of the *International Charter for the Conservation and Restoration of Monuments and Sites* (1964), otherwise known as the Venice Charter, reads:

Imbued with a message from the past, the historic monuments of generations of people remain to the present day as living witnesses of their age-old traditions. People are becoming more and more conscious of the unity of human values and regard ancient monuments as a common heritage. The common responsibility to safeguard them for future generations is recognized. It is our duty to hand them on in the full richness of their authenticity.

The Venice Charter is not a treaty and therefore does not become enforceable as law. The Philippines is not legally bound to follow its directive, as in fact, these are not directives but mere guidelines – a set of the best practices and techniques that have been proven over the years to be the most effective in preserving and restoring historical monuments, sites and buildings.

The City of Manila concedes that DMCI-PDI's Zoning Permit was granted without going through the process under Ordinance No. 8119. However, the same was properly rectified when, faced with mounting opposition, DMCI-PDI itself sought clarification from the City of Manila and immediately began complying with the procedure for applying for a variance. The MZBAA did subsequently recommend the approval of the variance and the City Council of Manila approved the same, ratifying the licenses and permits already given to DMCI-PDI. Such ratification was well within the right of the City Council of Manila. The City Council of Manila could have denied the application had it seen any reason to do so. Again, the ratification is a function of the City Council of Manila, an exercise of its discretion and well within the authority granted it by law and the City's own Ordinance No. 8119.

The main purpose of zoning is the protection of public safety, health, convenience, and welfare. There is no indication that

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It is essential that the principles guiding the preservation and restoration of ancient buildings should be agreed and be laid down on an international basis, with each country being responsible for applying the plan within the framework of its own culture and traditions.

By defining these basic principles for the first time, the Athens Charter of 1931 contributed towards the development of an extensive international movement which has assumed concrete form in national documents, in the work of ICOM and UNESCO and in the establishment by the latter of the International Centre for the Study of the Preservation and the Restoration of Cultural Property. Increasing awareness and critical study have been brought to bear on problems which have continually become more complex and varied; now the time has come to examine the Charter afresh in order to make a thorough study of the principles involved and to enlarge its scope in a new document.

x x x x x x x x x

the Torre de Manila project brings any harm, danger, or hazard to the people in the surrounding areas except that the building allegedly poses an unsightly view on the taking of photos or the visual appreciation of the Rizal Monument by locals and tourists. In fact, the Court must take the approval of the MZBAA, and its subsequent ratification by the City Council of Manila, as the duly authorized exercise of discretion by the city officials. Great care must be taken that the Court does not unduly tread upon the local government's performance of its duties. It is not for this Court to dictate upon the other branches of the government how their discretion must be exercised so long as these branches do not commit grave abuse of discretion amounting to lack or excess of jurisdiction.

Likewise, any violation of Ordinance No. 8119 must be determined in the proper case and before the proper forum. It is not within the power of this Court in this case to make such determination. Without such determination, this Court cannot simply declare that the City of Manila had failed to consider its duties under Ordinance No. 8119 when it issued the permits in DMCI-PDI's favor without making a finding of fact how the City of Manila failed "to consider" its duties with respect to areas outside the boundaries of the Rizal Park. In the first place, this Court has no jurisdiction to make findings of fact in an original action like this before this Court. Moreover, the City of Manila could not legally apply standards to sites outside the area covered by the ordinance that prescribed the standards. With this, taken in light of the lack of finding that there was grave abuse of discretion on the part of the City of Manila, there is no basis to issue the writ of mandamus against the City of Manila.

During the Oral Arguments, it was established that the granting of a variance is neither uncommon nor irregular. On the contrary, current practice has made granting of a variance the rule rather than the exception:

JUSTICE CARPIO: Let's go to Ordinance 8119. For residential condominium that stand alone, in other words not part of a commercial complex or an industrial complex...

ATTY. FLAMINIANO: Yes, Your Honor.

JUSTICE CARPIO: The [Floor Area Ratio (FAR)] is uniform for the entire City of Manila, the FAR 4, correct?
ATTY. FLAMINIANO: I believe so, Your Honor, it's FAR 4.

JUSTICE CARPIO: So it's FAR 4 for all residential condominium complex or industrial projects.
ATTY. FLAMINIANO: There might be, the FAR might be different when it comes to condominiums in commercial areas, Your Honor.

JUSTICE CARPIO: Yes, I'm talking of stand-alone...
ATTY. FLAMINIANO: Yes, Your Honor.

JUSTICE CARPIO: ...residential condominiums...
ATTY. FLAMINIANO: Uniform at FAR 4, Your Honor.

JUSTICE CARPIO: And the percentage of land occupancy is always 60 percent.
ATTY. FLAMINIANO: 60 percent, correct, Your Honor.

JUSTICE CARPIO: Okay...how many square meters is this Torre de Manila?
x x x x
ATTY. FLAMINIANO: The land area, Your Honor, it's almost 5,000...5,556.

JUSTICE CARPIO: So, it's almost half a hectare.
ATTY. FLAMINIANO: Yes, Your Honor.

JUSTICE CARPIO: And at FAR 4, it can only build up to 18 storeys, I mean at FAR 4, is that correct?
ATTY. FLAMINIANO: If the 60 percent of the lot...

JUSTICE CARPIO: Yes, but that is a rule.
ATTY. FLAMINIANO: That is a rule, that's the rule, Your Honor.

JUSTICE CARPIO: 60 percent of...
ATTY. FLAMINIANO: Of the land area.

JUSTICE CARPIO: ...buildable, the rest not buildable.
ATTY. FLAMINIANO: Yes, Your Honor.

JUSTICE CARPIO: Okay, so if you look around here in the City of Manila anywhere you go, you look at stand alone residential condominium buildings...
ATTY. FLAMINIANO: There's a lot of them, Your Honor.

JUSTICE CARPIO: It's always not FAR 4, it's more than FAR 4.
ATTY. FLAMINIANO: Yes, Your Honor.

JUSTICE CARPIO: And the buildable area is to the edge of the property...it's not 60 percent, correct?
ATTY. FLAMINIANO: Yes, Your Honor.

JUSTICE CARPIO: So, if you look at all the...residential buildings in the last ten years, they [have] all variances. They did not follow the original FAR 4 or the 60 percent (of land occupancy). Every residential building that stand alone was a variance.
ATTY. FLAMINIANO: That's correct, Your Honor.

JUSTICE CARPIO: So the rule really in the City of Manila is variance, and the exception which is never followed is FAR 4.
ATTY. FLAMINIANO: FAR 4, it appears to be that way, Your Honor.

x x x x x x x x x

JUSTICE CARPIO: Every developer will have to get a variance because it doesn't make sense to follow FAR 4 because the land is so expensive and if you can build only two storeys on a 1,000-square meter lot, you will surely lose money, correct?
ATTY. FLAMINIANO: Exactly, Your Honor.[75] (Emphasis supplied)

Thus, the MZBAA's grant of the variance cannot be used as a basis to grant the mandamus petition absent any clear finding that said act amounted to "grave abuse of discretion, manifest injustice, or palpable excess of authority."

The KOR is Estopped from Questioning the Torre de Manila Construction.

The KOR is now estopped from questioning the construction of the Torre de Manila project. The KOR itself came up with the idea to build a structure right behind the Rizal Monument that would dwarf the Rizal Monument.

In the mid-1950s, the Jose Rizal National Centennial Commission (JRNCC) formulated a plan to build an Educational

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[75] TSN, 25 August 2015, pp. 18-22, 24.

Center within the Rizal Park. In July 1955, the KOR proposed the inclusion of a national theater on the site of the Educational Center. The JRNCC adopted the proposal. The following year, a law — Republic Act No. 1427[76] — authorized the establishment of the Jose Rizal National Cultural Shrine consisting of a national theater, a national museum, and a national library on a single site.[77]

To be built on the open space right behind the 12.7 meter high Rizal Monument were: the KOR's proposed *national theater*, standing 29.25 meters high and 286 meters in distance from the Rizal Monument; the *national library*, standing 25.6 meters high and 180 meters in distance from the Rizal Monument, with its rear along San Luis Street (now T.M. Kalaw Street); and facing it, the *national museum*, at 19.5 meters high and 190 meters in distance from the Rizal Monument, with its back along P. Burgos Street.[78]

However, several sectors voiced their objections to the construction for various reasons. Among them, the need to preserve the open space of the park, the high cost of construction, the desecration of the park's hallowed grounds, and **the fact that the proposed cultural center including the 29.25 meter high national theater proposed by the KOR would dwarf the 12.7 meter high Rizal Monument**.[79] The JRNCC revised the plan and only the National Library — which still stands today — was built.[80]

According to the NHCP, the KOR even proposed to build a Rizal Center on the park as recently as 2013.[81] The proposal was disapproved by the NHCP and the Department of Tourism.

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[76] *An Act Appropriating Funds to Carry Out the Purposes of Jose Rizal National Centennial Commission Created by Executive Order No. Fifty-two, dated August Ten, Nineteen Hundred and Fifty-four.* Approved on 14 June 1956.

[77] *Rollo*, Vol. V, p. 2497.

[78] *Id.* at 2500.

[79] *Id.* at 2493.

[80] *Id.* at 2500.

[81] *Id.* at 2502.

Surely, as noble as the KOR's intentions were, its proposed center would have dwarfed the Rizal Monument with its size and proximity.

In contrast, the Torre de Manila is located well outside the Rizal Park, and to the rear of the Rizal Monument — approximately 870 meters from the Rizal Monument and 30 meters from the edge of Rizal Park.[82]

It is a basic principle that "one who seeks equity and justice must come to court with clean hands."[83] In *Jenosa v. Delariarte*,[84] the Court reiterated that he who seeks equity must do equity, and he who comes into equity must come with clean hands. This "signifies that a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent, or deceitful as to the controversy in issue."[85] Thus, the KOR, having earlier proposed a national theater a mere 286 meters in distance from the back of the Rizal Monument that would have dwarfed the Rizal Monument, comes to this Court with unclean hands. It is now precluded from "seeking any equitable refuge"[86] from the Court. The KOR's petition should be dismissed on this ground alone.

Torre de Manila is Not a Nuisance *Per Se*.

In its petition, the KOR claims that the Torre de Manila is a nuisance *per se* that deserves to be summarily abated even without judicial proceedings.[87] However, during the Oral

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[82] *Rollo*, Vol. III, p. 1283.

[83] *Bank of the Philippine Islands v. Fernandez*, G.R. No. 173134, 2 September 2015, 768 SCRA 563, 582, citing *Roque v. Lapuz*, 185 Phil. 525 (1980).

[84] 644 Phil. 565 (2010).

[85] *Id*. at 573, citing *University of the Philippines v. Hon. Catungal, Jr.*, 338 Phil. 728, 744 (1997); *In re: Petition for Separation of Property Elena Buenaventura Muller v. Helmut Muller*, 531 Phil. 460, 468 (2006).

[86] *Beumer v. Amores*, 700 Phil. 90, 98 (2012).

[87] *Rollo*, Vol. I, p. 18.

Arguments, counsel for the KOR argued that the KOR now believes that the Torre de Manila is a nuisance *per accidens* and not a nuisance *per se*.[88]

Article 694 of the Civil Code defines a **nuisance** as any act, omission, establishment, business, condition of property, or anything else which: (1) injures or endangers the health or safety of others; (2) annoys or offends the senses; (3) shocks, defies or disregards decency or morality; (4) obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) hinders or impairs the use of property.

The Court recognizes two kinds of nuisances. The first, nuisance *per se*, is one "recognized as a nuisance under any and all circumstances, because it constitutes a direct menace to public health or safety, and, for that reason, may be abated summarily under the undefined law of necessity."[89] The second, nuisance *per accidens*, is that which "depends upon certain conditions and circumstances, and its existence being a question of fact, it cannot be abated without due hearing thereon in a tribunal authorized to decide whether such a thing in law constitutes a nuisance."[90]

It can easily be gleaned that the Torre de Manila is not a nuisance *per se*. The Torre de Manila project cannot be considered as a "direct menace to public health or safety." Not only is a condominium project commonplace in the City of Manila, DMCI-PDI has, according to the proper government agencies, complied with health and safety standards set by law. DMCI-PDI has been granted the following permits and clearances prior to starting the project: (1) Height Clearance Permit from the Civil Aviation Authority of the Philippines;[91] (2) Development Permit from

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[88] TSN, 21 July 2015, p. 105.

[89] *Aquino v. Municipality of Malay, Aklan*, G.R. No. 211356, 29 September 2014, 737 SCRA 145, 163; *Salao v. Santos,* 67 Phil. 547, 550 (1939). Citations omitted.

[90] *Id*.

[91] *Rollo*, Vol. I, p. 371.

the HLURB;[92] (3) Zoning Certification from the HLURB;[93] (4) Certificate of Environmental Compliance Commitment from the Environment Management Bureau of the Department of Environment and Natural Resources;[94] (5) Barangay Clearance;[95] (6) Zoning Permit;[96] (7) Building Permit;[97] (8) and Electrical and Mechanical Permit.[98]

Later, DMCI-PDI also obtained the right to build under a variance recommended by the MZBAA and granted by the City Council of Manila. Thus, there can be no doubt that the Torre de Manila project is not a nuisance *per se*.

On the other hand, the KOR now claims that the Torre de Manila is a nuisance *per accidens*.

By definition, a nuisance *per accidens* is determined based on its surrounding conditions and circumstances. These conditions and circumstances must be well established, not merely alleged. The Court cannot simply accept these conditions and circumstances as established facts as the KOR would have us do in this case.[99] The KOR itself concedes that the question of whether the Torre de Manila is a nuisance *per accidens* is a question of fact.[100]

The authority to decide when a nuisance exists is an authority to find facts, to estimate their force, and to apply rules of law to the case thus made.[101] This Court is no such authority. It is

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[92] *Id*. at 382.

[93] *Id*. at 372.

[94] *Id*. at 385-392.

[95] *Id*. at 373.

[96] *Rollo,* Vol. III, p. 1369.

[97] *Id*. at 1370.

[98] *Id*. at 1366.

[99] TSN, 21 July 2015, p. 107.

[100] *Id*. at 106.

[101] *Iloilo Ice and Cold Storage Co. v. Municipal Council of Iloilo*, 24 Phil. 471, 475 (1913). Citations omitted.

not a trier of facts. It cannot simply take the allegations in the petition and accept these as facts, more so in this case where these allegations are contested by the respondents.

The task to receive and evaluate evidence is lodged with the trial courts. The question, then, of whether the Torre de Manila project is a nuisance *per accidens* must be settled after due proceedings brought before the proper Regional Trial Court. The KOR cannot circumvent the process in the guise of protecting national culture and heritage.

The TRO must be lifted.

Injunctive reliefs are meant to preserve substantive rights and prevent further injury[102] until final adjudication on the merits of the case. In the present case, since the legal rights of the KOR are not well-defined, clear, and certain, the petition for mandamus must be dismissed and the TRO lifted.

The general rule is that courts will not disturb the findings of administrative agencies when they are supported by substantial evidence. In this case, DMCI-PDI already acquired vested rights in the various permits, licenses, or even variances it had applied for in order to build a 49-storey building which is, and had been, allowed by the City of Manila's zoning ordinance.

As we have time and again held, courts generally hesitate to review discretionary decisions or actions of administrative agencies in the absence of proof that such decisions or actions were arrived at with grave abuse of discretion amounting to lack or excess of jurisdiction.

In *JRS Business Corp. v. Montesa*,[103] we held that mandamus is the proper remedy if it could be shown that there was neglect on the part of a tribunal in the performance of an act which the law specifically enjoins as a duty, or there was an unlawful exclusion of a party from the use and enjoyment of a right to

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[102] See *Garcia, Jr. v. Court of Appeals*, 604 Phil. 677 (2009).

[103] 131 Phil. 719, 725 (1968).

which he is clearly entitled. Only specific legal rights may be enforced by mandamus if they are clear and certain. If the legal rights of the petitioner are not well-defined, definite, clear, and certain,[104] the petition must be dismissed. Stated otherwise, the writ never issues in doubtful cases. It neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.[105]

In sum, bearing in mind the Court does not intervene in discretionary acts of the executive department in the absence of grave abuse of discretion,[106] and considering that mandamus may only be issued to enforce a clear and certain legal right,[107] the present special civil action for mandamus must be dismissed and the TRO issued earlier must be lifted.

A FINAL WORD

It had been Rizal's wish to die facing the rising sun. In his *Mi Ultimo Adios*, the poem he left for his family the night before he was executed, Rizal wrote:

> *Yo muero cuando veo que el cielo se colora*
> *Y al fin anuncia el día tras lóbrego capuz*[108]
>
> [*Ako'y mamamatay, ngayong namamalas*
> *na sa Silanganan ay namamanaag*

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[104] *Zamora v. Wright*, 53 Phil. 613, 629 (1929).

[105] *Sanson v. Barrios*, 63 Phil. 198, 201 (1936).

[106] *Case v. Board of Health*, 24 Phil. 250, 277 (1913).

[107] *Pascua v. Tuason*, 108 Phil. 69, 73 (1960), citing *Zamora v. Wright*, *supra* note 104; *Sanson v. Barrios*, *supra* note 105; *Pabico v. Jaranilla*, 60 Phil. 247 (1934).

[108] From the untitled poem written by Jose Rizal given to his family the night before his execution in 1896 <https://en.wikipedia.org/wiki/Mi_%C3%BAltimo_adi%C3%B3s> (accessed on 16 February 2017). The poem was later given the title *Mi Ultimo Adios* by Mariano Ponce. <http://www.joserizal.ph/pm03.html> (accessed on 16 February 2017).

yaong maligayang araw na sisikat
sa likod ng luksang nagtabing na ulap.][109]

[I die just when I see the dawn break,
Through the gloom of night, to herald the day][110]

Yet at the point of his execution, he was made to stand facing West towards Manila Bay, with his back to the firing squad, like the traitor the colonial government wished to portray him. He asked to face his executioners, facing the East where the sun would be rising since it was early morning, but the Spanish captain did not allow it. As he was shot and a single bullet struck his frail body, Rizal forced himself, with his last remaining strength, to turn around to face the East and thus he fell on his back with his face to the sky and the rising sun. Then, the Spanish captain approached Rizal and finished him off with one pistol shot to his head.

Before his death, Rizal wrote a letter to his family. He asked for a simple tomb, marked with a cross and a stone with only his name and the date of his birth and death; no anniversary celebrations; and interment at *Paang Bundok* (now, the Manila North Cemetery). Rizal never wanted his grave to be a burden to future generations.

The letter never made it to his family and his wishes were not carried out. The letter was discovered many years later, in 1953. By then, his remains had been entombed at the Rizal Monument, countless anniversaries had been celebrated, with memorials and monuments built throughout the world.

Rizal's wish was unmistakable: to be buried without pomp or pageantry, to the point of reaching oblivion or obscurity in the future.[111] For Rizal's life was never about fame or vainglory,

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[109] From *Pahimakas ni Dr. Jose Rizal*, Tagalog Translation of Rizal's *Mi Ultimo Adios* by Andres Bonifacio <https://en.wikipedia.org/wiki/Mi_%C3%BAltimo_adi%C3%B3s> (accessed on 16 February 2017).

[110] English translation by Charles Derbyshire <http://en.wikipilipinas.org/index.php/Mi_Ultimo_Adios> (accessed on 24 April 2017).

[111] *Were Rizal's Burial Wishes Honored?*, Dr. Pablo S. Trillana, <http://newsinfo.inquirer.net/554367/were-rizals-burial-wishes-honored> (accessed on 16 February 2017).

but for the country he loved dearly and for which he gave up his life.

The Rizal Monument is expressly against Rizal's own wishes. That Rizal's statue now stands facing West towards Manila Bay, with Rizal's back to the East, adds salt to the wound. If we continue the present orientation of Rizal's statue, with Rizal facing West, we would be like the Spanish captain who refused Rizal's request to die facing the rising sun in the East. On the other hand, if Rizal's statue is made to face East, as Rizal had desired when he was about to be shot, the background – the blue sky above Manila Bay – would forever be clear of obstruction, and we would be faithful to Rizal's dying wish.

WHEREFORE, the petition for mandamus is **DISMISSED** for lack of merit. The Temporary Restraining Order issued by the Court on 16 June 2015 is **LIFTED** effective immediately.

SO ORDERED.

Sereno, *C.J.*, *Bersamin*, *del Castillo*, and *Reyes, JJ.*, concur.

Velasco, *Jr.*, *Perlas-Bernabe*, *Leonen*, and *Tijam*, *JJ.*, see separate concurring opinions.

Leonardo-de Castro, Peralta, Mendoza, Caguioa, and *Martires, JJ.*, join the dissent of *J.* Jardeleza.

Jardeleza, J., see dissenting opinion.

CONCURRING OPINION

VELASCO, JR., *J.*:

I concur with the majority decision. I submit this opinion only to articulate the nuances of my position and to address several points raised by the minority through the dissent of Justice Francis H. Jardeleza (Justice Jardeleza).

I

This case started out as a petition for injunction filed directly before us by the petitioner Knights of Rizal against the respondent DMCI Project Developers, Inc. (DMCI-PDI).[1] In it, petitioner primarily prayed for the following reliefs:[2]

1. The issuance of an order **enjoining the DMCI-PDI from continuing with the construction** of the *Torre de Manila* building; *and*

2. The issuance of an order directing the **demolition of so much of the said building already erected** by the DMCI-PDI.

Subsequently, however, we issued a resolution:[3] (a) treating the instant case as a *mandamus* petition and (b) impleading — as public respondents herein — the City of Manila, the National Commission for Culture and the Arts (NCCA), the National Museum (NM) and the National Historical Commission of the Philippines (NHCP).

The conversion of the instant case to a *mandamus* petition and the addition of public respondents, to my mind, made clear what ought to be the central issue of the case: ***whether any or all of the respondents may be compelled to perform one or both acts sought to be enjoined in the original petition for injunction***. The main inquiry, in other words. is whether any or all of the respondents may be compelled (1) to stop or prohibit the continued construction of the *Torre de Manila* building and/or (2) to demolish so much of the said building that already stands.

In order to answer the foregoing query, it is necessary to make a parallel determination on whether any of the respondents

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[1] The petition was actually originally filed against respondent DMCI Homes, Inc. (DMCI-HI). However, DMCI-HI was substituted in the present suit by DMCI-PDI.

[2] See page 25 of the Petition for Injunction.

[3] Dated November 25, 2014.

has the ***legal duty*** to perform one or both of the mentioned acts. It is rudimentary, after all, that a writ of *mandamus* will only lie to compel the performance of an act if such act is one "*which the law specifically enjoins as a duty resulting from an office, trust or station*"[4] on the part of the respondent/s.

During the course of this case, various arguments were proffered in favor of the view that the respondents have the legal duties to stop or prohibit the continued construction of the *Torre de Manila* building and/or to demolish it in its present state. I find that these arguments may generally be subdivided into three (3) kinds.

The *first* argument is premised on the claim that the *Torre de Manila* building — visible as it is in the backdrop of the Rizal Monument to anyone facing such monument at or from a certain distance — had impaired the **view of dominance of the Rizal Monument in relation to its background** (view of dominance), which view is supposedly protected by the following laws and guidelines:

1. Sections 15 and 16, Article XIV of the Constitution,
2. Republic Act (RA) Nos. 4846, 7356 and 10066,
3. the Venice Charter, *and*
4. the 2012 NHCP Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages (NHCP Guidelines).

The theory of the first argument is that the illegal impairment of the view of dominance of the Rizal Monument gives rise to the duty of the respondents — particularly the DMCI-PDI (as the builder of the offending structure), as well as the NCCA, NM and NHCP (as the cultural agencies tasked by RA No. 10066 to protect the nation's cultural properties)[5] — to perform the subject acts.

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[4] Section 3 of Rule 65 of the Rules of Court.

[5] *See* Section VII of RA No. 10066.

The *second* argument, on the other hand, rests on the notion that the construction of the *Torre de Manila* was carried out by DMCI-PDI in bad faith with the use of void permits, *viz*:

1. The zoning permit issued to DMCI-PDI for the construction of the *Torre de Manila* is void for exceeding the maximum number of floors allowed for buildings within the Institutional University Cluster per Section 17 of Ordinance No. 8119 of the City of Manila.
2. The building permit for the Torre de Manila is also void as a necessary consequence of the nullity of the zoning permit, pursuant to Section 69 of Ordinance No. 8119.
3. The variance granted to DMCI-PDI by the *Sangguniang Panglungsod* of the City of Manila, which exempted the Torre de Manila from the floor and height limits of Ordinance No. 8119, is also void due to it not being obtained in accordance with the procedure prescribed under Section 61 of the same ordinance.
4. All of the foregoing irregularities in its permits were known to DMCI-PDI yet it still pushed through with the construction of the *Torre de Manila*.

The theory of the second argument is that the nullity of the permits coupled by the bad faith of DMCI-PDI gives rise to the duty of the DMCI--PDI and of the City of Manila to perform the subject acts.

Lastly, the *third* argument is premised on the assumption that the *Torre de Manila* building constitutes as a nuisance for it apparently annoys or offends the senses of anyone viewing the Rizal Monument.

The theory of the third argument is that the character of the *Torre de Manila* building as a nuisance gives rise to the duty of DMCI-PDI and the City of Manila to cause the summary abatement of the said building.

II

The minority, through the dissent of Justice Jardeleza, confined themselves in addressing only the first argument.[6]

As to the first argument, the minority essentially held that the view of dominance of the Rizal Monument is not afforded any legal protection under: (a) Sections 15 and 16 of Article XIV of the Constitution, (b) RA Nos. 4846, 7356 and 10066, (c) the Venice Charter or (d) the NHCP Guidelines. The minority elucidated thusly:[7]

a. Sections 15 and 16 of Article XIV of the Constitution are *not* self-executing provisions; both are mere expressions of general state policies and so, by themselves and without the aid of any enabling law, they cannot be the source of any enforceable right or claim of protection.

b. Though RA Nos. 4846, 7356 and 10066 all implement to some extent the broad policies of Sections 15 and 16 of Article XIV of the Constitution, none of the said statutes provides any clear and definite protection to a view of dominance for any of the country's historical and cultural sites, let alone one for the Rizal Monument.

c. The Venice Charter does not rise to the level of enforceable law. There is no showing that the Philippines has legally committed to observe such charter. Neither was it established that the principles contained therein are norms of general or customary international law. At any rate, the Venice Charter, by its own words, only seems to be hortatory.

d. The NHCP Guidelines is neither law nor an enforceable regulation. It appears that it has never been published nor filed with the Law Center of the University of the Philippines. Moreover, like the Venice Charter, the NHCP Guidelines appears to be merely hortatory.

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[6] *See* page 7 of the Dissenting Opinion of Justice Jardeleza.

[7] *See* pages 7-16 of the Dissenting Opinion of Justice Jardeleza.

The inquiry of the majority, however, did not stop there.

According to the minority, even though no national law categorically guarantees a view of dominance to any of the nation's cultural properties, there exists a local Manila legislation that actually extends such a guarantee to at least the city's historical sites and facilities.[8] To this end, they cited Sections 47 and 48 of Ordinance No. 8119 of the City of Manila. As the minority explained:[9]

1. Section 47 of Ordinance No. 8119 provides standards that aim to protect Manila's historical sites and facilities from impairment that may be caused by development projects. The protection afforded by Section 47 extends even to the *view* of the city's historical sites and facilities, as two of the standards therein make explicit reference to: (a) the maintenance of the "*landscape and streetscape*" qualities of such sites and facilities as well as (b) the preservation of the "*visual character*" of the same.

2. Section 48 of Ordinance No. 8119, on the other hand, prescribes standards that aim to protect properties and neighborhoods that are adjacent to a proposed development project. Two standards therein make explicit reference to: (a) an obligation of property developers to consider, in the design of their projects, the "*natural environmental character*" of adjacent properties as well as (b) a prohibition against certain projects that could be detrimental to the "*skyline*."

Be that as it may, the minority withheld themselves from determining: (a) whether the Rizal Monument and Park is a historical site or facility in contemplation of Ordinance No. 8119, (b) whether the abovementioned standards in Sections 47 and 48 apply to the DMCI-PDI and the *Torre de Manila* building and, if so, (c) whether DMCI-PDI, in erecting the said building,

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[8] Page 16 of the Dissenting Opinion of Justice Jardeleza.

[9] *See* pages 18-22 of the Dissenting Opinion of Justice Jardeleza.

had breached or impaired any of such standards. They implicitly considered the City of Manila as the entity in the best position to make such determinations; pointing out that it was supposedly the latter's duty do so, as, in fact, it should have already done so, prior to issuing permits to DMCI-PDI.

In this case, however, the minority found that the City of Manila had failed to consider the abovementioned standards in Sections 47 and 48 of Ordinance No. 8119 when it issued the permits for the construction of the *Torre de Manila* to DMCI-PDI.[10]

And so, the minority posited that to a writ of mandamus compelling the City of Manila to re-evaluate the permits it issued to DMCI-PDI ought to be issued in the present case.

III

I share the minority's disregard of the second and third arguments. The second and third arguments actually pose factual questions that are more properly settled in the first instance, not by the Court, but by an appropriate office, administrative agency or trial court.

I even agree with their position that the Rizal Monument's view of dominance is neither protected nor guaranteed by: (a) Sections 15 and 16 of Article XIV of the Constitution, (b) RA Nos. 4846, 7356 and 10066, (c) the Venice Charter or (d) the NHCP Guidelines.

I disagree, however, with the minority's interpretation that the *view* — that is, the view of dominance — of Manila's historical sites and facilities are protected by Sections 47 and 48 of Ordinance No. 8119. A careful reading of both sections, in their proper contexts, easily disproves such interpretation.

Hence, I cannot but disagree with the minority's proposition compelling the City of Manila, through a writ of *mandamus*, to re-evaluate the permits of DMCI-PDI. Such a re-evaluation will serve no useful purpose given that none of the standards

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[10] *See* pages 32-34 of the Dissenting Opinion of Justice Jardeleza.

enumerated under Sections 47 and 48 of Ordinance No. 8119 can have any application to the present dispute.

I remain convinced that there is no law, whether national or local, that protects the view of dominance of the Rizal Monument. Verily, I am constrained to follow the only logical conclusion of that finding, *i.e.*, there is **no compellable duty on the part of any of the respondents to stop or prohibit the construction of the *Torre de Manila* building or to otherwise destroy so much of the said building already constructed**.

I, therefore, join the majority and vote to dismiss the *mandamus* petition.

A. Sections 47 and 48 of Ordinance No. 8119 Do Not Protect View of Dominance of Rizal Monument

Contrary to the minority's finding, Sections 47 and 48 *do not* protect the view — particularly, the view of dominance — of Manila's historical sites and facilities.

View of Dominance

The view of dominance of a property, at least for purposes of the dispute at hand, refers to a characteristic of a property that permits it to be viewed as the *sole* or *most prominent* element *vis-a-vis* its background. This is the attribute of the Rizal Monument that was supposedly impaired by the construction of the *Torre de Manila*, per the proponents of the first argument.

An inviolable view of dominance is not an inherent attribute of any kind of property — not even of our monuments and national shrines.[11] To merit inviolability, there must be a law that guarantees and protects it.

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[11] Indeed, at least two (2) of the country's most revered monuments — the Bonifacio Monument in Caloocan City and the Ninoy Aquino Monument in Makati City—already stand in highly urbanized settings and completely surrounded by high buildings and/or billboards. *See* "*Examples of Monuments of Other Filipino National Heroes*," Memorandum of the NHCP.

A law that purports to protect the view of dominance of a particular property, such as a historical site or facility, must necessarily be a law that either ***prohibits*** the construction of buildings and other structures within a certain area *outside* of the premises of the site or facility or ***prescribes specific limitations*** on any such construction. Without such express prohibition or limitation, there can be no effective assurance that the view of dominance of a historical site or facility would not be impaired.

The nature of a law protecting a view of dominance, therefore, is similar to one that establishes an easement; it imposes a burden (in this case, a building prohibition or restriction) upon certain properties so as to ensure that the prominent view of another property in relation to its background remains unimpaired.

Section 47 Does Not Prohibit or Regulate the Construction of Buildings and Other Structures Outside of the Premises of Manila's Historical Sites and Facilities; Its Standards Do Not Apply to DMCI-PDI and the Torre de Manila

Section 47 of Ordinance No. 8119, true enough, enumerates standards that aim to protect Manila's historical sites and facilities from impairment. Those standards, however, do not extend protection to the view of dominance of such sites and facilities.

A reading of Section 47 reveals that the standards enumerated thereunder only apply to construction projects involving the "*development of historic sites and facilities*" themselves, to wit:

> SEC. 47. *Historical Preservation and Conservation Standards.* – Historic sites and facilities shall be conserved and preserved. These shall, to the extent possible, be made accessible for the educational and cultural enrichment of the general public.
>
> The following shall guide the **development of historic sites and facilities**:
>
> x x x x x x x x x (emphasis supplied)

The clear import of the foregoing is that Section 47 only applies to development projects that are implemented *within* the historical sites or facilities. The section, in other words, has absolutely no application to projects that are constructed outside of such site or facility.

Since Section 47 does not regulate, much less prohibit, construction projects that surrounds the city's historical sites and facilities, it cannot be said that the said section provides any protection or guarantee to the view of dominance of such sites and facilities. The standards under Section 47 could not be invoked so as to prohibit a building — standing on private land and without the premises of a historical site or facility — from rising and becoming visible in the background of such site or facility.

Hence, even assuming that the Rizal Monument is a historical site or facility in contemplation of Ordinance No. 8119, it is manifest that none of the standards under Section 47 — much less those pointed out by the minority — can conceivably apply to the case of the DMCI-PDI and the *Torre de Manila*. Indeed, a thorough look at some of those standards will quickly expose their inaptness:

First. Section 47(3) of the ordinance, which requires the submission of a heritage impact statement and of construction plans to the City Planning and Development Office and the NHCP for review, only applies to property developers who propose to "*to add, to alter or partially demolish*" a heritage property. This cannot apply to the DMCI-PDI because the *Torre de Manila* building is built on private property well outside the premises of the Rizal Monument and even of the Rizal Park, and does not add to, alter or partially demolish the said monument and park.

Second. Section 47(7) of the ordinance, which requires residential and commercial infill *in heritage areas* to maintain the existing "*landscape and streetscape*" qualities of such area, cannot apply to DMCI-PDI simply because the *Torre de Manila* does not stand on any such "*heritage area*."

Apropos to this point is the uncontroverted fact that the *Torre de Manila* building stands on an area that has not been declared as an "*anthropological or archeological area*," nor designated as a "*heritage zone, cultural property, historical landmark or a national treasure*" by the NHCP.[12]

Third. Section 47(9) of the ordinance, which requires power and communication equipment[13] to be placed in locations that do not detract from the "*visual character*" of the heritage resources and which do not have negative impact on its architectural integrity, can never apply to DMCI-PDI because it is not a "*local utility company*" and its *Torre de Manila* project is not involved with the installation of any power and communication equipment in or within the Rizal Monument and Park.

Verily, none of the standards under Section 47 of Ordinance No. 8119 may be considered as protective of the view of dominance of any of Manila's historical sites and facilities. Such standards are clearly meant to apply only to development projects *within* the historical sites or facilities themselves. None of them, consequently, can have any possible application to DMCI-PDI and the *Torre de Manila*.

Standards Under Section 48 Cited By the Majority Are Mere General Norms on Construction Projects That Do Not Guarantee the View of Dominance of Adjacent Properties

Section 48 of Ordinance No. 8119, on the other hand, enumerates standards that aim to protect the character, environmental limitation, convenience and safety of properties and neighborhoods that are adjacent to a construction project. The section, by its terms, is meant to have universal

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[12] Opinion of City Legal Officer of the City of Manila dated September 12, 2012, Annex E, Position Paper of the City of Manila.

[13] That is, metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless communication towers and other utility equipment.

application, *i.e.*, its standards apply to all construction projects within the city (such as the *Torre de Manila*) and are intended to protect any kind of properties or neighborhoods adjacent thereto (such as the Rizal Monument).

Be that as it may, Section 48 does not prescribe any concrete building prohibition or restriction on construction projects that are specially geared towards the preservation of the view of dominance of properties or neighborhoods adjacent thereto. The standards under Section 48 that were invoked by the majority are mere ***general*** norms that, *per se*, are insufficient to guarantee such view. The said standards do not establish operable norms by themselves and so, to gain substance, should be read with other provisions of the ordinance or of other laws:

First. The second paragraph of Section 48, which requires every construction project to be "*in harmony with the existing and intended character of its neighborhoods*," obviously has reference to the provisions of Ordinance No. 8119 that demarcates the different zoning areas of the City of Manila.[14] This does not guarantee the view of dominance of neighborhoods adjacent to a construction project, but only requires the latter to adhere to the "*character*" of such neighborhoods as "*intended*" by the zoning regulations.

Second. Section 48(1), which requires construction projects to consider the "*natural environmental character*" of adjacent properties, has perceptible reference to the provisions of the National Building Code on sanitation[15] as well as to our different environmental laws and regulations. This provision actually has no connection whatsoever with protecting the view of dominance of a property adjacent to a construction project.

Third. Section 48(7), which prohibits large commercial signages that are detrimental to the "*skyline*," is an adjunct of

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[14] *See* Sections 7 and 8 of Ordinance No. 8119. *See also* Zoning Map, Annex B, Ordinance No. 8119.

[15] Chapter IX of Presidential Decree (PD) No. 1096.

Section 36 of Ordinance No. 8119 that, in turn, states that all "*advertising, business signs and billboards*" must comply with "*existing laws, rules and regulations*."[16] This is not a direct guarantee of the view of dominance of any property, but a general prohibition against certain kinds of signages. Moreover, for obvious reasons, this provision cannot apply to the *Torre de Manila*.

Verily, none of the standards under Section 48 of Ordinance No. 8119 may be considered as protective of the view of dominance of any of property within the city, much less of the Rizal Monument.

B. Mandamus to Compel Re-evaluation Does Not Lie

The minority's proposition compelling the City of Manila to re-evaluate the permits it issued to DMCI-PDI is premised on the claim that the former, in so issuing the said permits, overlooked certain standards under Sections 47 and 48 of Ordinance No. 8119 that supposedly protects the view of dominance of Manila's historical sites and facilities. The underlying purpose of the re-evaluation was to allow the City of Manila to determine, in essence, the following: (a) whether the Rizal Monument and Park is a historical site or facility in contemplation of Ordinance No. 8119, (b) whether the abovementioned standards in Sections 47 and 48 apply to the DMCI-PDI and the *Torre de Manila* building and, if so, (c) whether DMCI-PDI, in erecting the said building, had breached or impaired any of such standards.

My discussion in the immediately preceding segment, however, established that none of the standards under Sections 47 and 48 of Ordinance No. 8119 actually extends protection to the view of dominance of any property within Manila. It cannot be said, therefore, that the City of Manila had overlooked, misinterpreted or misapplied any pertinent standards when it issued the permits to DMCI-PDI. The need for a re-evaluation is thereby also negated as the possibility that the same would

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[16] See Chapter XX of PD No. 1096.

yield an outcome different from the original evaluation is but reduced to nil.

Hence, the directive compelling the City of Manila to re-evaluate the permits of DMCI-PDI must fail. A re-evaluation will only waste resources, further delay the final resolution of the case and defeat the very purpose why we took cognizance of the petition in the first place. The compulsion of such an act is certainly not the office of the writ of *mandamus*.

IV

This case has been pending with us for more than two (2) years. In that time I certainly had ample opportunity to scour our statute books for any pertinent law or regulation that could be considered as protective of the Rizal Monument's view of dominance. And scour I did. Yet, I found none.

The absence of law protecting the view of dominance of the Rizal Monument strips the first argument of any semblance it might have first had as a *bona fide* legal dispute. Without the backing of law, the only query the argument actually brings to the fore is whether the Rizal Monument is still pleasing to look at or to take picture of in light of the *Torre de Manila* looming in its background. To my mind, that is not a question that the Court may dabble into, much less settle in the exercise of its judicial power.

For whatever it is worth, however, may I just add that not all viewing and photographic opportunities[17] of the Rizal Monument have been lost as a consequence of the construction of the *Torre de Manila.* From my own personal observation, the visibility *Torre de Manila* building in the backdrop of the Rizal Monument is highly dependent on the distance and angle from which the monument is viewed.

Thus, while one vantage point does expose the *Torre de Manila* in the background of the Rizal Monument:

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[17] *See* page 11 of the Petition.

Other vantage points permit a view of the Rizal Monument with only a minimum of, if not totally without, the *Torre de Manila* building in sight:

Hence, even from a lay perspective, it cannot be gainsaid that the construction of the *Torre de Manila* building had deprived anyone of the chance to view or photograph the Rizal Monument without the said building looming in the background.

V

Now, I vote.

It has been said that a writ of *mandamus* only lies in the enforcement of a clear legal right on the part of the petitioner and in the compulsion of a clear legal duty on the part of the respondent.[18] Here, it has been established that there is no law, whether national or local, that protects the view of dominance of the Rizal Monument or prohibits DMCI-PDI from constructing in its land a building such as the *Torre de Manila*. The conclusion, to my mind, is inevitable — petitioner is not entitled to the writ inasmuch as there is no compellable duty on the part of any of the respondents to stop or prohibit the construction of the *Torre de Manila* building or to otherwise destroy so much of the said building already constructed.

IN VIEW WHEREOF, I vote to **DISMISS** the instant petition for *mandamus*.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

Before this Court is a petition for injunction[1] — subsequently and uncontestedly converted by this Court into one for *mandamus* — filed by herein petitioner Knights of Rizal (petitioner), seeking to compel respondents[2] to stop the

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[18] *Philippine Coconut Authority v. Primex Coco Products*, G.R. No. 163088, July 20, 2006, 495 SCRA 763.

[1] See *rollo*, Vol. I, pp. 3-28.

[2] Original respondent, DMCI Homes, Inc., was subsequently substituted by respondent DMCI Project Developers, Inc., as the owner and developer of the Torre de Manila project (see Manifestation and Motion of DMCI-

construction of the Torre de Manila, a high-rise condominium project situated about 870 meters outside and to the rear of the Rizal Park, as it allegedly obstructs the sightline, setting, or backdrop of the Rizal Monument, which is claimed to be a historical or cultural heritage or resource protected by the Constitution and various laws. Owing to the nature of the action, the resolution of this case therefore depends on whether or not petitioner has satisfied the requirements necessary for a writ of *mandamus* to issue.

"*Mandamus* is defined as a writ commanding a tribunal, corporation, board or person to do the act required to be done when it or he unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office or which such other is entitled, there being no other plain, speedy, and adequate remedy in the ordinary course of law."[3]

Section 3, Rule 65 of the Rules of Court lays down under what circumstances a petition for *mandamus* may be filed:

SEC. 3. *Petition for mandamus*. – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages

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PDI dated October 14, 2014; *rollo*, Vol. I, pp. 240-242). Later on respondents the City of Manila, the National Historical Commission of the Philippines, the National Museum and the National Commission on Culture and the Arts were impleaded as respondents to this case (see Court's Resolution dated November 25, 2014; *id*. at 418-C-418-D).

[3] *Systems Plus Computer College v. Local Government of Caloocan City*, 455 Phil. 956, 962 (2003), citing Section 3, Rule 65 of the Rules of Court.

sustained by the petitioner by reason of the wrongful acts of the respondent.

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Based on jurisprudence, the peremptory writ of *mandamus* is characterized as "an extraordinary remedy that is issued only in extreme necessity, and [because] the ordinary course of procedure is powerless to afford an adequate and speedy relief to one who has a clear legal right to the performance of the act to be compelled."[4] Thus, it is a basic principle that "**[a] writ of *mandamus* can be issued only when petitioner's legal right to the performance of a particular act which is sought to be compelled is clear and complete**. **A clear legal right is a right which is indubitably granted by law or is inferable as a matter of law.**"[5] Stated otherwise, "***mandamus will issue only when the petitioner has a clear legal right to the performance of the act sought to be compelled and the respondent has an imperative duty to perform the same***."[6]

As a corollary, it is fundamental that "**[t]he remedy of *mandamus* lies [only] to compel the performance of a ministerial duty**. A purely ministerial act or duty is one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, **without regard to or the exercise of its own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial**."[7]

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[4] *Special People, Inc. Foundation v. Canda*, 701 Phil. 365, 369 (2013); underscoring supplied.

[5] *Carolina v. Senga*, G.R. No. 189649, April 20, 2015, 756 SCRA 55, 70; *Calim v. Guerrero*, 546 Phil. 240, 252 (2007); and *Manila International Airport Authority v. Rivera Village Lessee Homeowners Association, Inc.*, 508 Phil. 354, 371 (2005); emphasis and underscoring supplied.

[6] *Special People, Inc. Foundation v. Canda*, *supra* note 4, at 386; emphasis, italics, and underscoring supplied.

[7] *Carolina v. Senga*, *supra* note 5, at 70-71; emphases and underscoring supplied.

In this case, the clarity and completeness of petitioner's legal right to the compulsion prayed for -— *i.e.*, to stop the construction of the Torre de Manila — remains suspect in view of **the present lack of established and binding legal standards on the protection of sightlines and vistas of historical monuments, as well as heritage sites and/or areas**.

Primarily, petitioner cites Sections 15[8] and 16,[9] Article XIV of the 1987 Constitution as basis for the relief prayed for.[10] However, it is quite apparent that these are not self-executing provisions; thus, Congress must first enact a law that would provide guidelines for the regulation of heritage conservation, as well as the penalties for violations thereof. Otherwise stated, there is a need for supplementary statutory implementation to give effect to these provisions.

In this light, I join the *ponencia* in finding that there is currently no such law which specifically prohibits the construction of any structure that may obstruct the sightline, setting, or backdrop of a historical or cultural heritage or resource.[11] This prohibition is neither explicit nor deducible from any of the statutory laws discussed in the present petition.[12] There are several laws which

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[8] Sec. 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation's historical and cultural heritage and resources, as well as artistic creations.

[9] Sec. 16. All the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State which may regulate its disposition.

[10] See *rollo*, Vol. I, pp. 15-16.

[11] See *ponencia*, pp. 8 and 9.

[12] Particularly: (1) Republic Act No. (RA) 4846 entitled "AN ACT TO REPEAL ACT NUMBERED THIRTY EIGHT HUNDRED SEVENTY FOUR, AND TO PROVIDE FOR THE PROTECTION AND PRESERVATION OF PHILIPPINE CULTURAL PROPERTIES," otherwise known as "CULTURAL PROPERTIES PRESERVATION AND PROTECTION ACT" (June 18, 1966); (2) RA 7356 entitled "AN ACT CREATING THE NATIONAL COMMISSION FOR CULTURE AND THE ARTS, ESTABLISHING A NATIONAL ENDOWMENT FUND FOR CULTURE AND THE ARTS, AND FOR OTHER PURPOSES," otherwise

consistently reiterate the State's policy to protect and conserve the nation's historical and cultural heritage and resources. However, none of them adequately map out the boundaries of protection and/or conservation, at least to the extent of providing this Court with a reasonable impression that sightlines, vistas, and the like of historical monuments are indeed covered by compulsive limitations.

The closest to a statutory regulation of this kind would appear to be Section 25 of Republic Act No. (RA) 10066, which provides that:

> SEC. 25. *Power to Issue a Cease and Desist Order.* – **When the physical integrity of the national cultural treasures or important cultural properties are found to be in danger of destruction or significant alteration from its original state, the appropriate cultural agency shall immediately issue a Cease and Desist Order *ex parte* suspending all activities that will affect the cultural property.** The local government unit which has the jurisdiction over the site where the immovable cultural property is located shall report the same to the appropriate cultural agency immediately upon discovery and shall promptly adopt measures to secure the integrity of such immovable cultural property. Thereafter, the appropriate cultural agency shall give notice to the owner or occupant of the cultural property and conduct a hearing on the propriety of the issuance of the Cease and Desist Order. The suspension of the activities shall be lifted only upon the written authority of the appropriate cultural agency after due notice and hearing involving the interested parties and stakeholders. (Emphasis and underscoring supplied)

However, it is unclear whether "physical integrity," as used in this provision, covers sightlines, vistas, settings, and backdrops.

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known as "LAW CREATING THE NATIONAL COMMISSION OF CULTURE AND THE ARTS" (April 3, 1992); and (3) RA 10066 entitled "AN ACT PROVIDING FOR THE PROTECTION AND CONSERVATION OF THE NATIONAL CULTURAL HERITAGE, STRENGTHENING THE NATIONAL COMMISSION FOR CULTURE AND THE ARTS (NCCA) AND ITS AFFILIATED CULTURAL AGENCIES, AND FOR OTHER PURPOSES," otherwise known as the "NATIONAL CULTURAL HERITAGE ACT OF 2009," approved on March 26, 2010. (See *rollo*, Vol. I, pp. 16-17.)

The concept of "physical integrity" is glaringly undefined in the law, and in fact, as the *ponencia* aptly points out, the reasonable inference is that "physical integrity [equates] to the structure itself — how strong and sound it is."[13]

For another, petitioner claims that the Torre de Manila project violates the National Historical Commission of the Philippines (NHCP) Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages, as well as the International Charter for the Conservation and Restoration of Monuments and Sites, otherwise known as the Venice Charter.[14] However, the NHCP Guidelines is neither a law nor an enforceable rule or regulation, considering the lack of showing that the requirements of publication and filing with the Law Center of the University of the Philippines were complied with. Meanwhile, as the *ponencia* aptly points out, the Venice Charter is not a treaty but "merely a codification of guiding principles for preservation and restoration of ancient monuments, sites[,] and buildings[,]" which, however, defers to each country the "responsib[ility] for applying the plan within the framework of its own culture and traditions."[15] Hence, the guidelines stated therein have no binding effect in this jurisdiction.

Neither can **Manila Ordinance No. 8119** be considered as an existing local legislation that provides a clear and specific duty on the part of respondent City of Manila (the City of Manila) to regulate development projects insofar as these may adversely affect the view, vista, sightline or setting of a cultural property within the city. While I find this ordinance to be a binding regulation which not merely sets forth a tentative direction or instruction for property development within the city,[16] it is my view that none of its provisions justify the issuance of a writ of *mandamus* in favor of petitioner.

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[13] *Ponencia*, p. 12.

[14] See *rollo*, Vol. I, pp. 19-20.

[15] *Ponencia*, pp. 17-18.

[16] See *ponencia*, pp. 9-10.

The minority proposes that a writ of *mandamus* be issued to re-evaluate with dispatch the permits and variance issued in favor of DMCI Project Developers, Inc. (DMCI-PDI)'s Torre de Manila project, and thereby determine the applicability and/or compliance with the standards under **Sections 45, 53, 47, 48, and 60 (in relation to the grant of a variance) of Ordinance No. 8119**, and eventually, grant the appropriate reliefs and sanctions under the law.[17]

However, **Sections 45 and 53 of Ordinance No. 8119** respectively pertain to environmental conservation and protection standards, and the requirement of Environmental Compliance Certificates, and thus, are only relevant when there is an alleged violation of an environmental law affecting the natural resources within the City's premises:

> SEC. 45. Environmental Conservation and Protection Standards. – It is the intent of the City to protect its natural resources. In order to achieve this objective, all development shall comply with the following regulations:
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> 1. Views shall be preserved for public enjoyment especially in sites with high scenic quality by closely considering building orientation, height, bulk, fencing and landscaping.
>
> x x x x x x x x x
>
> SEC. 53. Environmental Compliance Certificate (ECC). – Notwithstanding the issuance of zoning permit (locational clearance) Section 63 of this Ordinance, no environmentally critical projects nor projects located in environmentally critical areas shall be commenced, developed or operated unless the requirements of ECC have been complied with.

In this case, the Rizal Monument is not claimed to be a natural resource whose view should be preserved in accordance with Section 45 (1) above. Neither was it claimed that the Torre de Manila project is covered by and/or has breached the ECC requirement under Section 53. Therefore, none of these provisions should apply to this case.

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[17] See Dissenting Opinion of Justice Francis H. Jardeleza.

In the same vein, **Section 48** of Ordinance No. 8119 provides for site performance standards, which, among others, only require that developments within the City be designed in a safe, efficient, and **aesthetically pleasing manner**:

SEC. 48. Site Performance Standards. – The City considers it in the **public interest** that all projects are designed and developed in a safe, efficient and **aesthetically pleasing manner**. Site development shall consider the environmental character and limitations of the site and its adjacent properties. All project elements shall be in complete harmony according to good design principles and the subsequent development must be visually pleasing as well as efficiently functioning especially in relation to the adjacent properties and bordering streets.

The design, construction, operation and maintenance of every facility shall be in harmony with the existing and intended character of its neighborhood. It shall not change the essential character of the said area but will be a substantial improvement to the value of the properties in the neighborhood in particular and the community in general.

Furthermore, designs should consider the following:

1. Sites, buildings and facilities shall be designed and developed with regard to safety, efficiency and high standards of design. **The natural environmental character of the site and its adjacent properties shall be considered in the site development of each building and facility.**

2. The height and bulk of buildings and structures shall be so designed that it does not impair the entry of light and ventilation, cause the loss of privacy and/or create nuisances, hazards or inconveniences to adjacent developments.

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8. No large commercial signage and/or pylon, **which will be detrimental to the skyline**, shall be allowed.

9. Design guidelines, deeds of restriction, property management plans and other regulatory tools that will ensure high quality developments shall be required from developers of commercial subdivisions and condominiums. These shall be submitted to the City Planning and Development Office (CPDO) for review and approval. (Emphases and underscoring supplied)

It is not inferable whether the "aesthetics" requirement under this provision precludes any form of obstruction on the sightline and vista of any historical monument within the City. It also does not account for a situation where the assailed development and historical monument are located in different cluster zones.

It has not also been claimed that the natural environmental character of the adjacent properties within the Torre de Manila's cluster zone, per Section 48, paragraph 3 (1) above, has been negatively impacted by the latter's construction. As worded, this provision regulates only environmental and not historical considerations; thus, it is premised with the requirement that "[s]ites, buildings and facilities [be] designed and developed with regard to safety, efficiency and high standards of design."

Likewise, Section 48, paragraph 3 (8) is inapplicable, considering that the Torre de Manila project is not a large commercial signage and/or pylon (or claimed to be an equivalent thereof) that would prove to be detrimental to the City's skyline.

Meanwhile, **Section 60** of Ordinance No. 8119 governs the grant of variances from the prescribed Land Use Intensity Control (LUIC) standards (among others, the Floor Area Ratio [FAR]) on buildings within a specific zone:

SEC. 60. Deviations. — Variances and exceptions from the provisions of this Ordinance may be allowed by the *Sangguniang Panlungsod* as per recommendation from the Manila Zoning Board of Adjustment and Appeals (MZBAA) through the Committee on Housing, Urban Development and Resettlements only when all the following terms and conditions are obtained/ existing:

1. Variance — all proposed projects which do not conformed [sic] with the prescribed allowable Land Use Intensity Control (LUIC) in the zone.

    a. The property is unique and different from other properties in the adjacent locality and, because of its uniqueness, the owner/s cannot obtain a reasonable return on the property.

This condition shall include at least three (3) of the following provisions:

- Conforming to the provisions of the Ordinance will cause undue hardship on the part of the owner or occupant of the property due to physical conditions of the property (topography, shape, etc.), which is not self-created.
- The proposed variance is the minimum deviation necessary to permit reasonable use of the property.
- The variance will not alter the physical character of the district/zone where the property for which the variance sought is located, and will not substantially or permanently injure the use of the other properties in the same district or zone.
- That the variance will not weaken the general purpose of the Ordinance and will not adversely affect the public health, safety, and welfare.
- The variance will be in harmony with the spirit of this Ordinance.

x x x x x x x x x

In this case, the City of Manila had already exercised its discretion to grant a variance in favor of DMCI-PDI's Torre de Manila project. The factors taken into account by the City of Manila in the exercise of such discretion are beyond the ambit of a *mandamus* petition. As above-mentioned, "**[t]he remedy of *mandamus* lies [only] to compel the performance of a ministerial duty**" which is "one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, **without regard to or the exercise of its own judgment upon the propriety or impropriety of the act done**."[18] It is settled that "[*m*]*andamus* is employed to compel the performance, when refused, of a ministerial duty, this being its chief use and not a discretionary duty. It is nonetheless likewise available to compel action, when refused, in matters involving judgment and discretion, **but not to direct the exercise of judgment or discretion in a particular way or the retraction or reversal**

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[18] See *Carolino v. Senga*, *supra* note 5, at 70; emphases and underscoring supplied.

of an action already taken in the exercise of either."[19] Further, while it has not been shown whether the conditions stated in Section 60 were complied with, it remains unclear whether or not these provisions can be — as it has been previously been —suspended due to justifiable reasons.[20]

What remains undisputed is the fact that DMCI-PDI applied for a variance, which application, upon due deliberation of the City's MZBAA, has been granted. Again, whether proper or not, the fact remains that discretion has already been exercised by the City of Manila. Thus, *mandamus* is not the appropriate remedy to enjoin compliance with the provisions on variance. Needless to state, erring public officials who are found to have irregularly exercised their functions may, however, be subjected to administrative/criminal sanctions in the proper proceeding therefor.

Finally, **Section 47** of Ordinance No. 8119, which enumerates several historical preservation and conservation standards, was supposedly not considered by the City of Manila when it allowed the construction of the Torre de Manila:

SEC. 47. Historical Preservation and Conservation Standards. – Historic sites and facilities shall be conserved and preserved. These shall, to the extent possible, be made accessible for the educational and cultural enrichment of the general public.

The following shall guide the development of historic sites and facilities:

1. Sites with historic buildings or places shall be developed to conserve and enhance their heritage values.
2. **Historic sites and facilities shall be adaptively re-used.**
3. Any person who proposes to **add, to alter, or partially demolish** a **designated heritage property** will require the

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[19] *Anchangco, Jr. v. Ombudsman*, 335 Phil. 766, 771-772 (1997); emphases and underscoring supplied.

[20] During the oral arguments, it was established that the granting of a variance is neither uncommon or irregular. On the contrary, current practice has made granting the variance the rule rather than the exception. (See *ponencia*, pp. 19-20, citing TSN, August 25, 2015, pp. 18-22.)

approval of the City Planning and Development Office (CPDO) and shall be required to prepare a heritage impact statement that will **demonstrate to the satisfaction of CPDO that the proposal will not adversely impact the heritage significance of the property and shall submit plans for review by the CPDO in coordination with the National Historical Institute (NHI)**.

4. Any proposed alteration and/or re-use of designated heritage properties shall be evaluated based on criteria established by the heritage significance of the particular property or site.

5. Where an owner of a heritage property applies for approval to demolish a designated heritage property or properties, the owner shall be required to provide evidence to satisfaction [sic] that demonstrates that rehabilitation and re-use of the property is not viable.

6. Any designated heritage property which is to be demolished or significantly altered, shall be thoroughly documented for archival purposes with a history, photographic records, and measured drawings, in accordance with accepted heritage recording guidelines, prior to demolition or alteration.

7. Residential and commercial infill in heritage areas will be sensitive to the existing scale and pattern of those areas, which **maintains the existing landscape and streetscape qualities of those areas**, and which does not result in the loss of any heritage resources.

8. Development plans shall ensure that parking facilities (surface lots, residential garages, stand-alone parking garages and parking components as parts of larger developments) are compatibly integrated into heritage areas, and/or are compatible with adjacent heritage resources.

9. Local utility companies (hydro, gas, telephone, cable) shall be required to place metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless telecommunication towers and other utility equipment and devices in locations **which do not detract from the visual character of heritage resources, and which do not have a negative impact on its architectural integrity**.

10. Design review approval shall be secured from the CPDO for any alteration of the heritage property to ensure that design

> guidelines and standards are met and shall promote preservation and conservation of the heritage property. (Emphases and underscoring supplied)

However, the fact that Section 47 speaks of the preservation of existing landscape and streetscape qualities (Section 47, paragraph 2 [7]), or conveys a mandate to local utility companies not to detract from the visual character of heritage resources (Section 47, paragraph 2 [9]) should not be enough for this Court to conclude that Ordinance No. 8119 imposes a prohibition against the obstruction of sightlines and vistas of a claimed heritage property via the construction of buildings at a particular distance therefrom. The operable norms and standards of protecting vistas and sightlines are not only undefined; it is also doubtful whether or not the phrases "landscape or streetscape qualities" and "visual character of heritage resources" as used in the provision even include the aspects of vistas and sightlines, which connote regulation **beyond the boundaries of a heritage site, building or place**, as in this case.

In the same light, it is also unclear whether or not a purported obstruction of a heritage property's vista and sightline would mean an "addition," "alteration," and/or "demolition" of the said property so as to trigger the application of Section 47, paragraph 2 (3) (which requires the prior submission of a heritage impact statement and the approval of the CPDO) and Section 47, paragraph 2 (4) (requiring evaluation based on the criteria of heritage significance) of Ordinance No. 8119. In fact, it would be sensible to conclude that these concepts of "addition," "alteration," and/or "demolition" relate to the concept of physical integrity in Section 25 of RA 10066, which as above-discussed pertains only to the architectural stability of the structure.

Plainly speaking, there is no discernible reference from our existing body of laws from which we can gather any legal regulation on a heritage property's vista and sightline. After a careful study of this case, it is my conclusion that the realm of setting preservation is a new frontier of law that is yet to be charted by our lawmakers. It is therefore a political question left for Congress and not for this Court to presently decide. Verily, our function as judges is to interpret the law; it is not

for us to conjure legal niceties from general policies yet undefined by legislature. Until such time that our legal system evolves on this subject, I believe that this Court is unprepared to grant a *mandamus* petition to compel the stoppage of the Torre De Manila project simply on the premise that the Torre de Manila "visually obstructs the vista and adds an unattractive sight to what was once a lovely public image."[21] In fact, this bare claim even appears to be in serious dispute, considering that the NHCP itself confirmed that the Torre de Manila was "outside the boundaries of the Rizal Park and well to the rear x x x of the Rizal National Monument; hence, **it cannot possibly obstruct the front view of the said National Monument**."[22] Likewise, the City Legal Officer of Manila City confirmed that the area on which the Torre de Manila is situated "lies outside the Luneta Park" and that it was "**simply too far from the Rizal Monument to be a repulsive distraction or have an objectionable effect on the artistic and historical significance of the hallowed resting place of the national hero**."[23] And finally, DMCI-PDI had demonstrated that the Rizal Monument can be viewed/ photographed at certain angles to avoid or at least minimize the Torre de Manila's presence;[24] thus, the obstructive effects of the building on the monument's sightline are not only questionable but at most, insubstantial.

To reiterate, case law exhorts that for *mandamus* to issue, it must be shown that the petitioner has ***a clear legal right to the performance of the act sought to be compelled and the respondent has an imperative duty to perform the same***.[25] The jurisprudential attribution is, in fact, exacting: "**[a] clear legal right is a right which is indubitably granted by law or is inferable as a matter of law**."[26] No such right of petitioner

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[21] *Rollo*, Vol. I, p. 172.

[22] See DMCI-PDI's Comment *Ad Cautelam* dated November 11, 2014; *id*. at 301-302; emphasis and underscoring supplied.

[23] *Id*. at 302; emphasis and underscoring supplied.

[24] See *id*. at 329-332.

[25] See *Special People, Inc. Foundation v. Canda*, *supra* note 4, at 386.

[26] *Carolino v. Senga*, *supra* note 5, at 70.

exists in this case. Neither do any of the respondents have the imperative duty to stop the Torre de Manila's construction.

Accordingly, for the reasons discussed herein, I vote to **DISMISS** the *mandamus* petition.

CONCURRING OPINION

"*To my family,*

I ask you for forgiveness for the pain I caused you, but some day I shall have to die and it is better that I die now in the plentitude of my conscience.

Dear parents and brothers: Give thanks to God that I may preserve my tranquility before my death. I die resigned, hoping that with my death you will be left in peace. Ah! It is better to die than to live suffering. Console yourself.

I enjoin you to forgive one another the little meanness of life and try to live united in peace and good harmony. Treat your old parents as you would like to be treated by your children later. Love them very much in my memory.

Bury me in the ground. Place a stone and a cross over it. My name, the date of my birth and of my death. Nothing more. If later you wish to surround my grave with a fence, you can do it. No anniversaries. I prefer Paang Bundok.

Have pity on poor Josephine."

- *Jose Rizal*[1]

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[1] The penultimate paragraph was cited in *rollo*, p. 2491, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* Jose Rizal's letter to his family, "*A mi familia*," undated, believed to have been written in Fort Santiago in December 1896, National Library of the Philippines. Translation by Jose Rizal National Centennial Commission (1964).

LEONEN, *J.*:

The soul of this nation and the story of the gallantry of our many peoples are more resilient than a bad photograph.

The Rizal Monument will not be physically altered. Adjoining properties owned by others have not been declared as national shrines.

Together with the Solicitor General, the petitioners argue that a specific view of the Rizal Monument is a legally protected right. They insist that even if the Rizal Monument is clearly in the foreground, the existence of the building of private respondents in the background violates that legally protected right. They insist that that background amounts to an alteration of the monument. They, however, fail to point to any clear text found in the Constitution, a statute, or an ordinance which contains this prestation. They have not succeeded in convincing this Court that there is precedent supporting their aesthetic propositions.

The dissent also acknowledges this. They agree that the temporary restraining order should be lifted. The dissent, however, insists that the matter be remanded to the Sangguniang Panlungsod of Manila to allow them, again, to deliberate as to whether to allow the construction or to cause its demolition.

I concur with the ponencia of Senior Associate Justice Antonio T. Carpio. There is no such law which mandates that the Rizal Monument, at a specific angle, should have only a specific background.

The Solicitor General and the petitioners are motivated by their passion, which can be summed up in a statement and which they want this Court to believe as a truism: a view of the monument with a tall building as background destroys the "soul of our nation." They claim that this gaze with a "photobomber" so undermines every conceivable narrative we can have of Rizal that there will be no way that our collective history as a people can be redeemed if we do not order the building to be torn down. They wish this Court of 15 unelected public servants to

read this specific version of history into the Constitution of this Republic. They want us to declare that the monument of Rizal is so sacred that it should dwarf any other human structure without any other judicially discernible standard.

I do not agree.

There is no law which inscribes such narrative. There is no law that empowers any majority of the 15 members of this Supreme Court to impose our own narrative of our country's own history.

History, like every other cultural understanding of who we are, is the dynamic product of constant democratic deliberation. To impose only a single version is akin to installing a dictatorship or disempowering present and future generations. Our history as a people is always in flux: always being written and always being reread in the light of contemporary challenges.

The Petition for Injunction, amended by this Court into a Petition for Mandamus, should fail.

I

This Petition should have been dismissed outright. The petitioners did not have standing and this Court had no jurisdiction over the subject matter of this case that the Petition, originally for injunction, had to be converted to *mandamus*.

Section 1, Article VIII of the Constitution provides:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

For this Court to exercise its power of judicial review, four (4) requisites must be satisfied. First, there must exist "an actual

and appropriate case."[2] Second, the party bringing suit must have a "personal and substantial interest ... in raising the constitutional question."[3] Third, "the exercise of judicial review is pleaded at the earliest opportunity."[4] Lastly, "the constitutional question is the *lis mota* of the case."[5]

The second requisite is absent in this case.

Legal standing requires that the party bringing suit has "sustained or will sustain direct injury as a result of the

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For the original text, *see rollo*, p. 2491, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing Documentos Rizalinos* (Manila: Imprenta Publica, 1953), pp. 89-90. *See also Cartas Entre Rizal y Los Miembros de la Familia*, available at <http://www.cervantesvirtual.com/descargaPdf/caras-entre-rizal-y-los-miembros-de-la-familia-segunda-parte-780268>. (Last accessed on May 22, 2017). The Spanish text reads:

A mi familia

Os pido perdon del dolor que os ocasiono, pero un dia u otro yo tenia que morir y mas vale que muera hoy en toda la plenitud de mi conciencia.

Queridos padres y hermanos: Dad gracias a Dios que me conserva la tranquilidad, antes de mi muerte. Muero resignado, esperando que con mi muerte os dejen en paz. ¡Ah! es major morir que vivir sufriendo. Consolaos.

Os recomiendo que os perdoneis, unos a otros las pequeñeces de la vida y tratad de vivir unidos en paz y en buena armonia. Tratad nuestros ancianos padres como quisierais ser tratados por vuestros hijos despues. Amadlos mucho, en memoria mia.

Enterradme en tierra, ponedme una piedra encima y una cruz. Mi nombre, la fecha de mi nacimiento y la de mi muerte. Nada mas. Si quereis despues rodear mi fosa con un cerco, lo podreis hacer.-Nada de aniversarios.-Preferio Paang Bundok.

Tened compasion de la pobre Josefina.

[2] *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 632 (2000) [Per *J*. Kapunan, *En Banc*], *citing Philippine Constitution Association v. Enriquez*, 235 SCRA 506 (1994), *citing Luz Farms v. Secretary of the Department of Agrarian Reform*, 192 SCRA 51 (1990); *Dumlao v. Commission on Elections*, 95 SCRA 392 (1980); and, *People v. Vera*, 65 Phil. 56 (1937).

[3] *Id*.

[4] *Id*.

[5] *Id*.

governmental act that is being challenged."[6] There must be "a personal stake in the outcome of the controversy"[7] on the part of the petitioner so as not to unnecessarily impede the judicial process. "For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice."[8]

There are exceptions to the rule on standing. Non-traditional suitors — taxpayers,[9] voters,[10] concerned citizens,[11] and legislators[12] — have been granted standing to question the constitutionality of governmental acts. The "transcendental importance"[13] of the issues raised is often cited as basis for granting standing.

Petitioner Knights of Rizal anchors its legal standing on its charter, Republic Act No. 646, Section 2 of which provides:

SECTION 2. The purposes of this corporation shall be to study the teachings of Dr. Jose Rizal, to inculcate and propagate them in and among all classes of the Filipino people, and by words and deeds to exhort our citizenry to emulate and practice the examples and

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[6] *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 632-633 (2000) [Per *J*. Kapunan, *En Banc*], *citing Joya v. Presidential Commission on Good Government*, 225 SCRA 568, 576 (1993).

[7] *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 633 (2000) [Per *J*. Kapunan, *En Banc*], *citing Baker v. Carr*, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663, 678 (1962).

[8] *Lozano v. Nograles*, 607 Phil. 334, 343-344 (2009) [Per *C.J.* Puno, *En Banc*].

[9] *Funa v. Villar*, 686 Phil. 571, 586(2012) [Per *J*. Velasco, Jr., *En Banc*], *citing David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 161.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Araneta v. Dinglasan*, 84 Phil. 368, 373 (1949) [Per *J*. Tuason, *En Banc*].

teachings of our national hero; to promote among the associated knights the spirit of patriotism and Rizalian chivalry; to develop a perfect union among the Filipinos in revering the memory of Dr. Jose Rizal; and to organize and hold programs commemorative of Rizal 's nativity and martyrdom.

Petitioner further cites as basis Section 7 of Republic No. 7356 or the Law Creating the National Commission for Culture and the Arts:

SECTION 7. *Preservation of the Filipino Heritage*. — It is the duty of every citizen to preserve and conserve the Filipino historical and cultural heritage and resources. The retrieval and conservation of artifacts of Filipino culture and history shall be vigorously pursued.

However, like any other corporation, petitioner Knights of Rizal may only exercise its corporate powers, specifically, its power to sue,[14] through its Board of Directors.[15] There must be a duly issued Secretary's Certificate attached to the petition

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[14] CORP. CODE, Sec. 36(1) provides:

SECTION 36. *Corporate Powers and Capacity*. – Every corporation incorporated under this Code has the power and capacity:

1. To sue and be sued in its corporate name.

[15] CORP. CODE, Sec. 23 provides:

SECTION 23. *The Board of Directors or Trustees*. – Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.

Every director must own at least one (1) share of the capital stock of the cqrporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be a director. Trustees of non-stock corporations must be members thereof. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines.

stating that the corporation's board allowed the filing of the suit in behalf of the corporation.[16]

Here, the Secretary's Certificate was not duly accomplished. There was no indication of petitioner's Corporate Secretary Maximo Salazar's community tax certificate number and competent evidence of identity. These were left blank in the Acknowledgment page.[17] The date of the alleged special meeting when Diosdado Santos, Deputy Supreme Commander of petitioner, was authorized by the Board to file the case, was also left blank.[18]

Moreover, there was no showing of a direct injury to petitioner or a specific member of Knights of Rizal caused by the construction of Torre de Manila. "[Losing] its moral authority and capacity 'to inculcate and propagate... [the teaching of] Dr. Jose Rizal'"[19] is too general and vague an interest to grant Knights of Rizal legal standing to sue. Further, Knights of Rizal is not a *citizen* with the duty to preserve and conserve historical and cultural heritage.

In *Integrated Bar of the Philippines v. Zamora*,[20] this Court denied legal standing to the Integrated Bar of the Philippines (IBP) for the organization's lack of direct and personal injury in the deployment of the Marines in select areas in Metro Manila. "[The IBP's] alleged responsibility to uphold the rule of law and the Constitution,"[21] this Court said, was not sufficient an interest considering the lack of allegation that the civil liberties of any of its individual members were violated. Explained the Court:

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[16] *See The Executive Secretary v. Court of Appeals*, 473 Phil. 27, 51 (2004) [Per *J*. Callejo, Sr., Second Division].

[17] *Rollo*, p. 36, Secretary's Certificate.

[18] *Id*. at 35, Secretary's Certificate.

[19] *Id*. at 2575-2576, Memorandum for Petitioner.

[20] 392 Phil. 618 (2000) [Per *J*. Kapunan, *En Banc*].

[21] *Id*. at 633.

In the case at bar, the IBP primarily anchors its standing on its alleged responsibility to uphold the rule of law and the Constitution. Apart from this declaration, however, the IBP asserts no other basis in support of its *locus standi*. The mere invocation by the IBP of its duty to preserve the rule of law and nothing more, while undoubtedly true, is not sufficient to clothe it with standing in this case. This is too general an interest which is shared by other groups and the whole citizenry. Based on the standards above-stated, the IBP has failed to present a specific and substantial interest in the resolution of the case. Its fundamental purpose which, under Section 2, Rule 139-A of the Rules of Court, is to elevate the standards of the law profession and to improve the administration of justice is alien to, and cannot be affected by the deployment of the Marines. It should also be noted that the interest of the National President of the IBP who signed the petition, is his alone, absent a formal board resolution authorizing him to file the present action. To be sure, members of the BAR, those in the judiciary included, have varying opinions on the issue. Moreover, the IBP, assuming that it has duly authorized the National President to file the petition, has not shown any specific injury which it has suffered or may suffer by virtue of the questioned governmental act. Indeed, none of its members, whom the IBP purportedly represents, has sustained any form of injury as a result of the operation of the joint visibility patrols. Neither is it alleged that any of its members has been arrested or that their civil liberties have been violated by the deployment of the Marines. What the IBP projects as injurious is the supposed "militarization" of law enforcement which might threaten Philippine democratic institutions and may cause more harm than good in the long run. Not only is the presumed "injury" not personal in character, it is likewise too vague, highly speculative and uncertain to satisfy the requirement of standing. Since petitioner has not successfully established a direct and personal injury as a consequence of the questioned act, it does not possess the personality to assail the validity of the deployment of the Marines. This Court, however, does not categorically rule that the IBP has absolutely no standing to raise constitutional issues now or in the future. The IBP must, by way of allegations and proof, satisfy this Court that it has sufficient stake to obtain judicial resolution of the controversy.[22]

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[22] *Id.* at 633-634.

With petitioner Knights of Rizal having no direct and personal interest in this case, it has no legal standing. On this ground alone, this Petition should have been dismissed outright.

The liberality in granting legal standing to those who have none should be tempered especially when the party suing is a corporation, the composition and nature of which inherently make the determination of direct and *personal* interest difficult. This is especially true in cases involving alleged violations of provisions under the Bill of Rights, which primarily involves "fundamental *individual* rights."[23]

The constitutional issue raised here is indeed novel. This Court has yet to decide on the extent of protection the State has to afford to our nation's historical and cultural heritage and resources, specifically, whether a declared national cultural treasure's sightlines and settings are part of its physical integrity.

Nevertheless, novelty, in it itself, does not equate to the transcendental importance of the issues involved. Constitutional issues, however novel, may likewise be resolved by regional trial courts at the first instance. Regional trial courts and this Court share concurrent original jurisdiction over issues involving constitutional questions.[24]

As pointed out in the majority opinion, factual issues[25] were raised in this Petition.[26] This Court, not being a trier of facts,[27] the

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[23] See Justice Ynares-Santiago's Dissenting Opinion in *People v. Lacson*, 459 Phil. 330, 372 (2003) [Per *J.* Callejo, Sr., *En Banc*].

[24] See *Ynot v. Intermediate Appellate Court*, 232 Phil. 615, 621 (1987) [Per *J.* Cruz, *En Banc*].

[25] For instance, on page 17-19 of its Petition for Injunction, petitioner Knights of Rizal raises the issue of whether the Torre de Manila is a nuisance *per se*. *See Ramcar, Inc. v. Millar*, 116 Phil. 825, 828-829 (1962) [Per *J.* J.B.L. Reyes, *En Banc*] where this Court held that "[w]hether a particular thing is or is not a nuisance is a question of fact[.]"

[26] *Ponencia*, p. 15.

[27] *Kalipunan ng Mahihirap, Inc. v. Robredo*, G.R. No. 200903, July 22, 2014 [Per *J.* Brion, *En Banc*].

Petition should have been filed before the regional trial court. This is also consistent with the doctrine of hierarchy of courts. Recourse must first be obtained from lower courts sharing concurrent jurisdiction with a higher court.[28]

Clarifying this concept in *Diocese of Bacolod v. Commission on Elections*,[29] we said:

> The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.
>
> The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.

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[28] See *People v. Cuaresma*, 254 Phil. 418, 426-428 (1989) [Per *J*. Narvasa, First Division].

[29] G.R. No. 205728, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf> [Per *J*. Leonen, *En Banc*].

This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[30] (Citation omitted)

II

This Court also has no subject matter jurisdiction over this case.

Jurisdiction over the subject matter is the "power to hear and determine cases of the general class to which the proceedings in question belong."[31] For this Court, its subject matter jurisdiction is provided in the first paragraph of Section 5 of Article VIII of the Constitution:

SECTION 5. The Supreme Court shall have the following powers: (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

As for cases for injunction such as that originally filed by petitioner Knights of Rizal, this Court has no jurisdiction. Actions for injunction have subject matters incapable of pecuniary estimation.[32] Therefore, such actions are under the exclusive original jurisdiction of regional trial courts.[33] Actions for injunction cannot be commenced before any other court.

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[30] *Id.* at 14.

[31] *Reyes v. Diaz*, 73 Phil. 484, 486 (1941) [Per *J.* Moran, *En Banc*].

[32] See *Bokingo v. Court of Appeals*, 523 Phil. 186, 196-197 (2006) [Per *J.* Callejo, Sr., First Division].

[33] Batas Blg. 129, Sec. 19(1) provides:

SECTION 19. *Jurisdiction in Civil Cases*. – Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation.

The present Petition was converted into mandamus as a matter of "[relaxing] procedural rules."[34] The dissent of Justice Francis H. Jardeleza cites as legal bases *Gamboa v. Teves*,[35] *Salvacion v. Central Bank of the Philippines*,[36] and *Alliance of Government Workers v. Minister of Labor and Employment*[37] where the petitions, as originally filed, were for declaratory relief. Despite lack of jurisdiction to take cognizance of the petitions,[38] this Court resolved the purely legal questions involved in *Gamboa, Salvacion*, and *Alliance of Government Workers* because of the issues' alleged "far-reaching implications."[39]

Gamboa, Salvacion, and *Alliance of Government Workers* should be the exception rather than the rule. Subject matter jurisdiction is a matter of law.[40] It cannot be "conferred by the acquiescence of the courts."[41] A court must not change the relief and remedy to accommodate a petition over which it has no subject matter jurisdiction the same way that parties cannot choose, consent to, or agree as to which court or tribunal should decide their disputes.[42] Accommodating a petition which,

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[34] *J.* Jardeleza's Dissenting Opinion.

[35] 668 Phil. 1 (2011) [Per *J.* Carpio, *En Banc*].

[36] 343 Phil. 539 (1997) [Per *J.* Torres, Jr., *En Banc*].

[37] 209 Phil. 1(1983) [Per *J.* Gutierrez, Jr., *En Banc*].

[38] Petitions for declaratory relief involve subject matters incapable of pecuniary estimation and, therefore, are under the exclusive original jurisdiction of the Regional Trial Courts. See *City of Lapu-Lapu v. Philippine Economic Zone Authority*, G.R. No. 184203, November 26, 2014, [Per *J.* Leonen, Second Division].

[39] *Gamboa v. Teves*, 668 Phil. 1, 36 (2011) [Per *J.* Carpio, *En Banc*]; *Salvacion v. Central Bank of the Philippines*, 343 Phil. 539, 556 (1997) [Per *J.* Torres, Jr., *En Banc*]; *Alliance of Government Workers v. Minister of Labor and Employment*, 209 Phil. 1, 12 (1983) [Per *J.* Gutierrez, Jr., *En Banc*].

[40] *Republic v. Estipular*, 391 Phil. 211, 218 (2000) [Per *J.* Panganiban, Third Division].

[41] *Id*.

[42] *Id*.

on its face, this Court cannot resolve for lack of jurisdiction, undermines the impartiality and independence of this Court. It ultimately erodes the public trust in our court system.

III

Even if the present Petition is treated as one for mandamus, it does not satisfy the requirements under Rule 65, Section 3. of the Rules of Court. There is no law that "specifically enjoins as a duty" the protection of sightlines and settings of historical or cultural properties.

Rule 65, Section 3 of the Rules of Court provides:

> SECTION 3. *Petition for Mandamus*. – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that the judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.
>
> The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

The following are required for mandamus to lie: first, "the plaintiff has a clear legal right to the act demanded";[43] second, "it must be the duty of the defendant to perform the act, because it is mandated by law";[44] third, "the defendant unlawfully neglects the performance of the duty enjoined by law";[45] fourth, "the

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[43] *De Castro v. Judicial and Bar Council*, 629 Phil. 629,705 (2010) [Per *J*. Bersamin, *En Banc*].

[44] *Id*.

[45] *Id*.

act to be performed is ministerial, not discretionary";[46] and, lastly, "there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law."[47]

IV

The first requisite is absent in this case. Petitioner Knights of Rizal has no clear legal right to an injunction against the construction of Torre de Manila. Petitioners failed to point to a law that specifically prohibits the construction of any structure that may obstruct the sightline, setting, or backdrop of a historical or cultural heritage or resource.

Petitioner Knights of Rizal mainly argues that the sightlines and setting of the Rizal Monument are protected under Sections 15 and 16, Article XIV of the Constitution:

> SECTION 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation's historical and cultural heritage and resources, as well as artistic creations.
>
> SECTION 16. All the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State which may regulate its disposition.

It is argued that Sections 15 and 16, Article XIV of the Constitution are not self-executing provisions and, therefore, cannot be made basis to stop the construction of Torre de Manila. The dissenting opinion considers that Sections 15 and 16 "do not create any judicially enforceable right and obligation for the preservation, protection or conservation of the prominence, dominance, vista points, vista corridors, sightlines and setting of the Rizal Park and the Rizal Monument."[48] It adds that Sections 15 and 16 are "mere statements of principles and policy"[49] and

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[46] *Id*.

[47] *Id*.

[48] *J*. Jardeleza's Dissenting Opinion.

[49] *J*. Jardeleza's Dissenting Opinion.

that "[t]he constitutional exhortation to 'conserve, promote, and popularize the nation's historical and cultural heritage and resources' lacks 'specific, operable norms and standards' by which to guide its enforcement."[50]

As examples of other non-self-executing provisions in the Constitution, the dissent enumerates Sections 11,[51] 12,[52] and 13,[53] Article II; Sections 1[54] and

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[50] *J.* Jardeleza's Dissenting Opinion.

[51] CONST. Art. II, Sec. 11 provides:

SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

Basco v. Philippine Amusement and Gaming Corporation, 274 Phil. 323, 343 (1991) [Per *J.* Paras, *En Banc*].

[52] CONST. Art. II, Sec. 12 provides:

SECTION 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

Basco v. Philippine Amusement and Gaming Corporation, 274 Phil. 323, 343 (1991) [Per *J.* Paras, *En Banc*].

[53] CONST. Art. II, Sec. 13 provides:

SECTION 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

Basco v. Philippine Amusement and Gaming Corporation, 274 Phil. 323, 343 (1991) [Per *J.* Paras, *En Banc*].

[54] CONST. Art. XIII, Sec. 1 provides:

SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

Tolentino v. Secretary of Finance, G.R. No. 115455, August 25, 1994, 235 SCRA 630, 685 [Per *J.* Mendoza, *En Banc*].

13,[55] Article XIII; and Sections 1[56] and 2,[57] Article XIV. Further cited is *Kilosbayan v. Morato*[58] where, according to the dissent, this Court held that the provisions in Article II on the Declaration of Principles and State Policies were not self-executing.

Sections 15 and 16, Article XIV of the Constitution are not legal bases for stopping the construction of Torre de Manila. Textually, nothing in Sections 15 and 16 indicates that the sightlines and setting surrounding a historical and cultural

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[55] CONST. Art. XIII, Sec. 13 provides:

SECTION 13. The State shall establish a special agency for disabled persons for rehabilitation, self-development and self-reliance, and their integration into the mainstream of society.

Basco v. Philippine Amusement and Gaming Corporation, 274 Phil. 323, 343 (1991) [Per *J*. Paras, *En Banc*].

[56] CONST. Art. XIV, Sec. 1 provides:

SECTION 1. The State shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all.

Tolentino v. Secretary of Finance, G.R. No. 115455, August 25, 1994, 235 SCRA 630, 685 [Per *J*. Mendoza, *En Banc*].

[57] CONST. Art. XIV, Sec. 2 provides:

SECTION 2. The State shall:

(1) Establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society;

(2) Establish and maintain a system of free public education in the elementary and high school levels. Without limiting the natural right of parents to rear their children, elementary education is compulsory for all children of school age;

(3) Establish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the underprivileged;

(4) Encourage non-formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs; and

(5) Provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills.

[58] 316 Phil. 652 (1995) [Per *J*. Mendoza, *En Banc*], cited by Justice Jardeleza in his Dissenting Opinion.

heritage or resource is subject to protection. Sections 15 and 16 contain substantive standards too general to serve as basis *for courts* to grant any relief to petitioner Knights of Rizal. To attempt to operate with these general substantive standards will "propel courts into uncharted ocean of social and economic policy making,"[59] encroaching on the functions properly belonging to the legislative and executive branches.

I do not agree, however, in making distinctions between self-executing and non-self-executing provisions.

A self-executing provision of the Constitution is one "complete in itself and becomes operative without the aid of supplementary or enabling legislation."[60] It "supplies [a] sufficient rule by means of which the right it grants may be enjoyed or protected."[61] "[I]f the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action,"[62] the provision is self-executing.

On the other hand, if the provision "lays down a general principle,"[63] or an enabling legislation is needed to implement the provision, it is not self-executing.

To my mind, the distinction creates false second-order constitutional provisions. It gives the impression that only self-executing provisions are imperative.

All constitutional provisions, even those providing general standards, must be followed. Statements of general principles

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[59] Justice Feliciano's Separate Concurring Opinion in *Oposa v. Factoran*, G.R. No. 101083, July 30, 1993, 224 SCRA 792, 818 [Per *J*. Davide, Jr., *En Banc*].

[60] *Manila Prince Hotel v. Government Service Insurance System*, 335 Phil. 82, 102 (1997) [Per *J*. Bellosillo, *En Banc*).

[61] *Id*.

[62] *Id*.

[63] *Id*.

and policies in the Constitution are frameworks within which branches of the government are to operate. The key is to examine if the provision contains a prestation and to which branch of the government it is directed. If addressed either to the legislature or the executive, the obligation is not for this Court to fulfill.

V

There are no second-order provisions in the Constitution. We create this category when we classify the provisions as "self-executing" and "non-self executing." Rather, the value of each provision is implicit in their normative content.

For instance, Sections 14, 15, 16, and 17, Article XIV of the Constitution must be read as provisions that contribute to each other's coherence. That is, we must interpret them holistically to understand the concepts labeled as culture and history. None of these provisions deserve to be read in isolation.

Section 14 reads:

> SECTION 14. The State shall foster the preservation, enrichment, and dynamic evolution of a Filipino national culture based on the principle of unity in diversity in a climate of free artistic and intellectual expression.

The object of the provision is a "Filipino national culture." In relation to this object, it is the State's duty to foster its "preservation, enrichment," and development. Our Filipino national culture should be based on the "principle of unity in diversity." It grows "in a climate of free artistic and intellectual expression."

Clearly, the Constitution acknowledges that culture exists at various levels and with many dimensions. In terms of social space, there is a "national" culture and local ones. There is diversity also among cultures. Ours is a multi-ethnic, multi-vocal, and multi-lingual state.

The Constitutional provision further implies that there can be unity both in the diversity of our culture as well as in their commonalities. Thus, the cultures that vary in terms of their

spatial, ethnic, or linguistic applications are not mutually exclusive of each other. They interact and reflect each other.

Significantly, culture evolves. It is not only to be preserved; it should also be enriched. It is not to archaically retard; it must develop. Intrinsic in the very concept of culture is that it is dynamic. "Free artistic and intellectual expression" ensures its malleability so that it becomes appropriate to the contemporary world while at the same time maintaining the values embedded in a common framework that defines the implicit ways of life that we transmit through generations.

Section 15 provides:

SECTION 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation's historical and cultural heritage and resources, as well as artistic creations.

Section 16 provides:

SECTION 16. All the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State which may regulate its disposition.

These provisions recognize the importance of arts and letters as cultural artifact. This provision, thus, acknowledges the State's duty to "conserve, promote, and popularize" five (5) artifacts: (a) historical heritage, (b) historical resources, (c) cultural heritage, (d) cultural resources, and (e) artistic creations.

Section 15 distinguishes between history and culture. History is a narrative of our past. Culture, on the other hand, encompasses the implicit social understanding of the ways of life that we transmit from generation to generation. While history is a contemporary narration of our past, culture is always contemporary with inspiration from both our past and our ambitions towards a common future.

History can explain or reflect on our culture. Culture, on the other hand, provides the frame for understanding our history. They both relate to each other. Being aspects of social consciousness, they also both evolve.

History and culture produce material things which can be preserved because they serve the purpose of symbolism. Historical heritage may consist of the monuments that will cause collective reflection. Historical resources are the materials which can be used to understand and perhaps clarify narratives of our past.

Of course, Section 16 also acknowledges artistic creations, which may not be the product of historical narrative or of culture. It thus provides an opening for the introduction of present understandings of culture. Artists are not necessarily bound by a view of the past. Art can also be an insight to our future.

Section 17 provides for acknowledgement of indigenous culture, thus:

> SECTION 17. The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.

This provision implies that culture may be indigenous, but not entirely so. By giving protection to the culture of indigenous communities in terms of their traditions and institutions, it impliedly also acknowledges that there are portions of our culture borrowed from our interaction with the outside world. In this view, culture is assumed to be dynamic. It is not unchanging.

In a democracy, dominant social, historical, and even cultural understanding is and will always be contested. Present generations are imbued with intrinsic rights to give their own reading of past events. They are not passive receptacles of cultural transmissions of their ancestors. It is they who live through the challenges of their generation and it is they, who armed with their variations on culture and their reading of history, contribute to our sense of nationhood.

Thus, our Constitution acknowledges the importance of freedom of expression. Nuance and dissent provide a rich but continuous stream of contestation. Dominant understanding is always challenged by newer ones. It is through these challenges

to understanding of the past that history and culture undergo constant enrichment and development. There is the constant problem of the real significance of events as well as personalities that animate our history. History becomes more contemporarily legible to the present generation.

Historians constantly discover more evidence and factual detail in past events which produce better insights of ourselves.

In this context, no hero can be venerated as unchanging nor as eternal god. No narrative of a hero should be accepted as more impervious than religious truth. No hero should be venerated exclusively as the "soul of the nation."

Similarly, no monument is so sacred that the way that it is seen and the meaning of such gaze should be kept unchanging.

The argument that the background of the Rizal Monument should be unchanging would be to attempt to impose several layers of inference that cumulate into an unreasonable view of how we should understand Jose Rizal, the extent that he was a protagonist during his historical period, and the significance of the events for us at present.

For instance, Jose Rizal's humility can be inferred through a letter he wrote and which was discovered posthumously. In a letter to his brother, he expressed his desire to be buried in an unmarked grave in a cemetery in Paco, Manila. This humility in public service may be lost when we insist that a monument, which Jose Rizal never imagined, commissioned to a Swiss artist, depicting him as dominant over all others who bled for our freedom, is profusely venerated.

This veneration amounts to a dominant narrative that petitioner wishes to impose. More troubling is that the petitioner wants to do so undemocratically: through a judicial writ.

Symbols mark a consensus which can change through time. By itself, it has no intrinsic value. It is not the material that should be protected. Rather, it is the values implicit in the symbolism which take part in a narrative.

Jose Rizal fought for a democratic society where every citizen could be educated and therefore critical of the dominant understandings imposed by the powerful. We deny him that vision when we impose on others a view of the aesthetic by judicial fiat.

VI.

Before Rizal was executed on December 30, 1896, he wrote his family expressing his wishes for his burial. The letter reads, in part:

> Bury me in the ground. Place a stone and a cross over it. My name, the date of my birth and of my death. Nothing more. If later you wish to surround my grave with a fence, you can do it. No anniversaries. I prefer Paang Bundok.[64]

After his execution, his body was secretly buried in Paco Cemetery. His sister, Narcisa, was able to convince the gravedigger to place a small marble slab on the gravesite.[65]

Rizal's family had his body exhumed on August 17, 1898 and placed in an ivory urn. The urn was kept in his mother's house in Binondo.[66]

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[64] *Rollo*, p. 2491, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* Jose Rizal, letter to his family, "*A mi familia*," undated, believed to have been written in Fort Santiago in December 1896, National Library of the Philippines; translation by Jose Rizal National Centennial Commission, 1964.

[65] *Id*. at 2492, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* Asuncion Lopez Bantug, Lolo Jose (Manila: Asuncion Lopez Bantug, Vibal Foundation, Inc., and Intramuros Administration, 2008), p. 165.

[66] *Id*. at 2492, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* Bantug, pp. 168-169 and "Jose Rizal (Remains Interred)," in National Historical Institute, Historical Markers, Metro Manila (Manila: National Historical Institute, 1993), p. 274.

It was on September 28, 1901 when Act No. 243[67] was passed. Act No. 243 authorized the use of Luneta for the building of a monument in honor of Rizal. The cost would be from publicly-raised funds and supervised by a committee composed of Paciano Rizal, Pascual Poblete, Juan Tuason, Teodoro Yangco, Mariano Limjap, Maximino Paterno, Ramon Genato, Tomas del Rosario, and Ariston Bautista. The Philippine Commission then passed Act No. 893[68] in 1903, appropriating US$15,000.00 to augment the fund.[69]

The committee was also tasked to oversee the international design competition from 1905 to 1907. European and American sculptors were invited to join the competition. The materials, however, would be produced in the Philippines. The estimated cost of the project was ₱100,000.00.[70]

There were 40 entries for the competition. On January 8, 1908, another committee composed of Governor-General James F. Smith, John T. Macleod, and Maximino M. Paterno announced their decision to the press and declared the *Al Martir de Bagumbayan* (To the Martyr of Bagumbayan) by Carlos Nicoli of Carrara, Italy as the winner of the competition.[71]

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[67] An Act granting the right to use public land upon the Luneta in the city of Manila upon which to erect a statue of Jose Rizal, from a fund to be raised by public subscriptions, and prescribing as a condition the method by which such subscription shall be collected and disbursed.

[68] An Act Appropriating Fifteen Thousand Dollars, United States Currency, For The Purpose Of Contributing To The Erection Of The Rizal Monument, And Authorizing The Insular Treasurer To Deposit The Funds Already Collected In A Bank To Draw Interest.

[69] *Rollo*, p. 2492, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* Act No. 243 (1901) and Act No. 893 (1903).

[70] *Id.* at 2492, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C.

[71] *Id.* at 2492, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* "Prize Winners," Manila Times, 8 January 1908; "The Rizal Monument: Story of its Own Erection," Philippines International 8, 2 (June-

The committee was dominated by foreigners. The top two winners were foreigners.

Carlos Nicoli could not post the required bond during the construction period. Thus, the second prize winner, the *Motto Stella* (Guiding Star) by Richard Kissling of Switzerland, was instead built. It consisted of a bronze statue of Rizal dressed in an overcoat facing west and holding a book, two boys reading a book facing south, a mother and child facing north, and a granite obelisk in the middle.[72]

The monument was constructed 100 meters southeast from Rizal's execution site. On December 29, 1912, the urn of Rizal's remains was brought to the Marble Hall of the Ayuntamiento de Manila. "After lying in state for a day, [it] was carried by funeral procession to Luneta." "The remains were buried at the base of the monument." The monument was inaugurated the following year.[73]

In the year of Rizal's centenary in 1961, Kissling's original design was altered by Juan Nakpil and commissioned by the

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July 1964): 4-8 and Ambeth R. Ocampo, "Much Ado about Torre: Rizal Asked Only for Cross on Tombstone," Philippine Daily Inquirer, 23 August 2015, A1.

[72] *Id*. at 2492-2493, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* Prize Winners," Manila Times, 8 January 1908; Ambeth R. Ocampo, "Much Ado about Torre: Rizal Asked Only for Cross on Tombstone," Philippine Daily Inquirer, 23 August 2015, A 1; and Juan F. Nakpil and Sons, Proposed Improvement of the Rizal Monument, Sheet A-1, Set 1/3,20 April 1961, NHCP Library.

[73] *Id.* at 2493, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* Ambeth R. Ocampo, "Much Ado about Torre: Rizal Asked Only for Cross on Tombstone," Philippine Daily Inquirer, 23 August 2015, A 1; Bantug, p. 169; footnote to "De Rizal a su familia (sin firma ni fecha)," in Oficina de Bibliotecas Publicas, Documentos Rizalinos Regalados Por El Pueblo Español Al Pueblo Filipino (Manila: Imprenta Publica, 1953), p. 91; Austin Craig, Rizal's Life and Minor Writings (Manila: Philippine Education Co., Inc., 1927), p. 215; and Sunday Times, 28 December 1947, p. 12.

Jose Rizal National Centennial Commission, in response to the concern that new structures in Luneta would dwarf the monument. A stainless steel pylon was superimposed over the obelisk, increasing the structure's height from 41 feet and 8 inches to 100 feet.[74]

The stainless steel pylon, however, divided public opinion. Some artists, such as Napoleon Abueva, supported it, while others were critical of it.[75] The pylon was removed two (2) years later "to avoid a temporary restraining order from a court that shared Nakpil's aesthetic sense."[76] The design of the monument remains unchanged to this day.

In 2013, the Rizal Monument was declared a National Monument[77] and a National Cultural Treasure.[78]

The value we now put on a monument designed by a Swiss, and chosen by a panel dominated by our American colonialists was weaved as part of our narrative. The monument is not a material artifact that was created by the hands of our anti-imperialist revolutionaries.

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[74] *Id.* at 2493, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* The Manila Times, 16 April 1963; The Chronicle magazine, 27 April 1963; and Juan F. Nakpil and Sons, Proposed Improvement of the Rizal Monument, Sheet A-1, Set 1/3,20 April 1961, NHCP Library.

[75] *Id.* at 2494, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* A. Ocampo, "Torre de Manila, Flap Repeats Itself," Philippine Daily Inquirer, 30 August 2015.

[76] *Id.*

[77] *Id.* at 2494, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* NHCP Board Resolution No. 5 s. 2013, "Declaring the Rizal Monument in Rizal Park a National Monument," 15 April 2013, NHCP Records Section.

[78] *Id.* at 2494, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* National Museum, Declaration No. 9 2013, "Declaration of the Monument to Dr. Jose Rizal in Rizal Park, City of Manila as a National Cultural Treasure," 14 November 2013.

It would be reasonable to consider that the significance of the Rizal Monument is a postcolonial reflection of those in power.

VII

The statutes cited by petitioner Knights of Rizal are Republic Act No. 4846 or the "Cultural Properties Preservation and Protection Act"; Republic Act No. 7356 or the "Law Creating the National Commission for Culture and the Arts"; and Republic Act No. 10066 or the "National Cultural Heritage Act of 2009."

Enacted in 1966, Republic Act No. 4846 declares it the policy of the State "to preserve and protect the cultural properties of the nation and to safeguard their intrinsic value."[79] With respect to Republic Act No. 7356, it provides:

> SECTION 7. *Preservation of the Filipino Heritage*. – It is the duty of every citizen to preserve and conserve the Filipino historical and cultural heritage and resources. The retrieval and conservation of artifacts ofFilipino culture and history shall be vigorously pursued.

Similar to the State policy declared in Republic Act No. 4846, Section 2 of Republic Act No. 10066 more elaborately provides:

> SECTION 2. *Declaration of Principles and Policies*. – Sections 14, 15, 16 and 17, Article XIV of the 1987 Constitution declare that the State shall foster the preservation, enrichment and dynamic evolution of a Filipino culture based on the principle of unity in diversity in a climate of free artistic and intellectual expression. The Constitution likewise mandates the State to conserve, develop, promote and popularize the nation's historical and cultural heritage and resources, as well as artistic creations. It further provides that all the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State, which may regulate its disposition.
>
> In the pursuit of cultural preservation as a strategy for maintaining Filipino identity, this Act shall pursue the following objectives:

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[79] Rep. Act. No. 4846, Sec. 2.

(a) Protect, preserve, conserve and promote the nation's cultural heritage, its property and histories, and the ethnicity of local communities;
(b) Establish and strengthen cultural institutions; and
(c) Protect cultural workers and ensure their professional development and well-being.

The State shall likewise endeavor to create a balanced atmosphere where the historic past coexists in harmony with modem society. It shall approach the problem of conservation in an integrated and holistic manner, cutting across all relevant disciplines and technologies. The State shall further administer the heritage resources in a spirit of stewardship for the inspiration and benefit of the present and future generations.

VIII

In case the *physical* integrity of a national cultural treasure or important cultural property is in danger of destruction or significant alteration from its original state, Republic Act No. 10066 grants the "appropriate cultural agency" the power to issue a cease and desist order. Section 25 of Republic Act No. 10066 provides:

SECTION 25. *Power to Issue a Cease and Desist Order.* – When the physical integrity of the national cultural treasures or important cultural properties are found to be in danger of destruction or significant alteration from its original state, the appropriate cultural agency shall immediately issue a Cease and Desist Order *ex parte* suspending all activities that will affect the cultural property. The local government unit which has the jurisdiction over the site where the immovable cultural property is located shall report the same to the appropriate cultural agency immediately upon discovery and shall promptly adopt measures to secure the integrity of such immovable cultural property. Thereafter, the appropriate cultural agency shall give notice to the owner or occupant of the cultural property and conduct a hearing on the propriety of the issuance of the Cease and Desist Order. The suspension of the activities shall be lifted only upon the written authority of the appropriate cultural agency after due notice and hearing involving the interested parties and stakeholders.

Petitioner Knights of Rizal argues that a national cultural treasure's "physical integrity" includes its "vista points" and

"visual corridors" as well as its "site" or its "surrounding areas." As basis for its argument, petitioner Knights of Rizal cites the National Historical Commission of the Philippines' Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages

1. **DOMINANCE**

Monuments are landmarks of our cities, towns and provinces. They must be honored, preserved and protected. Monuments should be given due prominence since they symbolize national significance. For the purposes of these guidelines, the Rizal National Monument in Luneta (Rizal Park, Manila) and the Bonifacio National Monument (Caloocan City) are established as objects of reference ...

. . . . . .

Facade of buildings around a monument, particularly on a rotunda or circle can be retrofitted with a uniform design to enhance the urban renewal of the site and the prominence and dominance of the monument. Likewise, building heights, volume and design should be regulated.

Measures by which dominance could be achieved are the following:

a. Maintain a clean and neat environment;
b. Keep vista points and visual corridors to monuments clear for unobstructed viewing appreciation and photographic opportunities;
c. Maintain a simple and environmental-friendly landscape. Provide plants and trees wherever appropriate, to enhance and soften the built areas;
d. Commercial billboards should not proliferate in a town center where a dominant monument is situated; Limit building signage throughout the second level of buildings around the monument; Cities, municipalities and provinces shall adopt these billboard and building signage regulations by passing local ordinances;
e. Introduce creative design devices such as paved walkways, attractive ground cover and rows of tall trees to make the monument the main attraction of the site;
f. The monument may be elevated on a mound or a platform to emphasize its importance;

g. Use strong contrast between the monument and its background. This will enhance the monument as a focal point of site; and,
h. Enclosing structures may be used to emphasize and protect the monument.

The scale of the figure of an outdoor monument should be kept to an ideal standard, which may be governed by the following:

Minimum	: Life-size
Maximum	: Twice the life-size
Landmark/Monumental structures	: More than the life-size

The scale would depend on the size of the open space where the monument shall be placed in relation to human perception. The larger the open space, the taller the monument. As a rule of thumb, no full-bodied monument must be smaller than life-size. The scales used by sculptors are usually one-and-a-half times the life-size or twice the life-size. These sizes, when placed on corresponding proportional pedestals, would appear life-size at an appropriate viewing distance. The over-all effect of the site should be an overwhelming experience. This feeling, thus, contributes to the effectiveness of the learning message the monument conveys.

2. **SITE AND ORIENTATION**

A. SITE/SETTING — the area or territory where a monument is found or located. The setting is not only limited with the exact area that is directly occupied by the monument, but it extends to the surrounding areas whether open space or occupied by other structures as may be defined by the traditional or juridical expanse of the property.

Articles 1 and 6 of the International Charter for the Conservation and Restoration of Monuments and Sites or the Venice Charter, petitioner argues, also require the conservation of a monument's setting:

ARTICLE 1. The concept of a historic monument embraces not only the single architectural work but also the urban or rural setting in which is found the evidence of a particular civilization, a significant development or a historic event. This applies not only to great works of art but also to more modest works of the past which have acquired cultural significance with the passing of time.

. . . . . .

ARTICLE 6. The conservation of a monument implies preserving a setting which is not out of scale. Wherever the traditional setting exists, it must be kept. No new construction, demolition or modification which would alter the relations of mass and colour must be allowed.

Again, textually, nothing in Republic Act Nos. 4846, 7356, and 10066 provides that the "physical integrity" of a historical or cultural property includes its sightlines and settings. As for the National Historical Commission of the Philippines' Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages, they do not have any legal effect. It has not been shown that these Guidelines were published[80] or that a copy was deposited in the University of the Philippines Law Center.[81]

Assuming that these Guidelines have the force of law, they allow for "urban renewal" of the site surrounding a monument. In this case, there is resistance against this "urban renewal" considering that Torre de Manila is the first high-rise building visible at the Rizal Monument's backdrop. However, as submitted by the National Historical Commission of the Philippines during the hearing on August 27, 2014 conducted by the Senate Committee on Education, Arts and Culture, there is no law prohibiting the construction of Torre de Manila.

Further, the Venice Charter has not been concurred in by at least two-thirds of all the members of the Senate.[82] Hence, its provisions have no legal effect in this jurisdiction.

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[80] *Tañada v. Tuvera*, 230 Phil. 528, 535 (1986) [Per *J*. Cruz, *En Banc*].

[81] ADM. CODE, Book VII, Chapter 2, Sec. 3(1) provides:

SECTION 3. *Filing*. – (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of any sanction against any party or persons.

[82] CONST. Art. VII, Sec. 21 provides:

SECTION 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

IX

Curiously, however, in spite of an acknowledgement that neither the National Historical Commission of the Philippines' Guidelines nor the Venice Charter has legal effect, the dissent of Justice Jardeleza suggests that the Venice Charter should be given weight in legal interpretation. Thus:

> Similarly, neither can the Venice Charter be invoked to prohibit the construction of the Torre de Manila project. The Venice Charter provides, in general terms, the steps that must be taken by State Parties for the conservation and restoration of monuments and sites, including these properties' setting. It does not, however, rise to a level of enforceable law. There is no allegation that the Philippines has legally committed to observe the Venice Charter. Neither are we prepared to declare that its principles are norms of general or customary international law which are binding on all states. We further note that the terms of both the NHCP Guidelines and the Venice Charter appear hortatory and do not claim to be sources of legally enforceable rights. These documents only urge (not require) governments to adopt the principles they espouse through implementing laws.
>
> Nevertheless, the Venice Charter and the NHCP Guidelines, along with various conservation conventions, recommendations and resolutions contained in multilateral cooperation and agreements by State and non- state entities, do establish a significant fact: **At the time of the enactment of our Constitution in 1987, there has already been a *consistent* understanding of the term "conservation" in the culture, history and heritage context as to cover not only a heritage property's physical/tangible attributes, but also its settings (e.g., its surrounding neighborhood, landscapes, sites, sight lines, skylines, visual corridors and vista points)**.
>
> The setting of a heritage culture, site or area is defined as "the immediate and extended environment that is part of, or contributes to, its significance and distinctive character." It is also referred to as "the surroundings in which a place is experienced, its local context, embracing present and past relationships to the adjacent landscape." It is further acknowledged as one of the sources from which heritage structures, sites and areas "derive their significance and distinctive character." Thus, any change to the same can "substantially and irretrievably affect" the significance of the heritage property.

The concept of settings was first formalized with the Xi'an Declaration on the Conservation of the Settings of Heritage Structures, Sites and Areas adopted by the 15th General Assembly of ICOMOS on October 21, 2005. The concept itself, however, has been acknowledged decades before, with references to settings, landscapes, and surroundings **appearing as early as 1962**.

To reiterate, our examination of the various multilateral and international documents on the matter shows a generally-accepted and oft-repeated understanding of "heritage conservation" as covering *more* than a cultural property's physical attributes to include its surroundings and settings. This "understanding" had, unarguably, already acquired "term of art" status even before the enactment of our Constitution in 1987. Verba *artis ex arte*. Terms of art should be explained from their usage in the art to which they belong.

We hold, absent proof of a clear constitutional expression to the contrary, that the foregoing understanding of heritage conservation provide more than sufficient justification against *a priori* limiting the plenary power of Congress to determine, through the enactment of laws, the scope and extent of heritage conservation in our jurisdiction. Otherwise put, the Congress can choose to legislate that protection of a cultural property extends beyond its physical attributes to include its surroundings, settings, view, landscape, dominance and scale. This flows from the fundamental principle that the Constitution's grant of legislative power to Congress is plenary, subject only to certain defined limitations, such as those found in the Bill of Rights and the due process clause of the Constitution.[83] (Emphasis in the original, citations omitted)

Unless we are ready to supplant the Congress or the National Historical Commission of the Philippines' efforts to discharge their legal process, we cannot impose an interpretation which precisely has not ripened into a legal obligation. Neither can we create international norm of a binding character. We are not the part of the State that participates in the articulation of *opinio juris* for purposes of international customary law. Neither do we, as a Court, participate in the crafting or concurrence of treaties. To do all these in the guise of the Latin principle *verba artis in arte* is to misplace the use of that canon.

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[83] *J.* Jardeleza's Dissenting Opinion.

Terms of art will apply only when there is an art or profession to which it belongs. "Terms of art" is jargon to a profession or art mediums. It does not apply for a normative interpretation that is still contested.

X

The core of the dissent is built on the interpretation that the Comprehensive Land Use Plan and Zoning Ordinance, or Ordinance No. 8119, "provides for a clear specific duty on the part of the City of Manila to regulate development projects insofar as these may adversely affect the view, vista, sightline or setting of a cultural property within the city."[84] Specifically cited were Sections 47 and 48 of Ordinance No. 8119, which allegedly require that the sightlines and settings of a "heritage resource" be free from visual obstruction, as well as Sections 45 and 53 dealing with environmental conservation and protection standards.

I disagree.

Section 47 provides:

SEC. 47. Historical Preservation and Conservation Standards. – Historic sites and facilities shall be conserved and preserved. These shall, to the extent possible, be made accessible for the educational and cultural enrichment of the general public.

The following shall guide the development of historic sites and facilities:

1. Sites with historic buildings or places shall be developed to conserve and enhance their heritage values.
2. Historic sites and facilities shall be adaptively re-used.
3. Any person who proposes to add, to alter, or partially demolish a designated heritage property will require the approval of the City Planning and Development Office (CPDO) and shall be required to prepare a heritage impact statement that will demonstrate to the satisfaction of CPDO that the proposal will not adversely impact the heritage significance of the

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[84] *J.* Jardeleza's Dissenting Opinion.

property and shall submit plans for review by the CPDO in coordination with the National Historical Institute (NHI).

4. Any proposed alteration and/or re-use of designated heritage properties shall be evaluated based on criteria established by the heritage significance of the particular property or site.

5. Where an owner of a heritage property applies for approval to demolish a designated heritage property or properties, the owner shall be required to provide evidence to satisfaction that demonstrates that rehabilitation and re-use of the property is not viable.

6. Any designated heritage property which is to be demolished or significantly altered, shall be thoroughly documented for archival purposes with a history, photographic records, and measured drawings, in accordance with accepted heritage recording guidelines, prior to demolition or alteration.

7. Residential and commercial infill in heritage areas will be sensitive to the existing scale and pattern of those areas, which maintains the existing landscape and streetscape qualities of those areas, and which does not result in the loss of any heritage resources.

8. Development plans shall ensure that parking facilities (surface lots, residential garages, stand-alone parking garages and parking components as parts of larger developments) are compatibly integrated into heritage areas, and/or are compatible with adjacent heritage resources.

9. Local utility companies (hydro, gas, telephone, cable) shall be required to place metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless telecommunication towers and other utility equipment and devices in locations which do not detract from the visual character of heritage resources, and which do not have a negative impact on its architectural integrity.

10. Design review approval shall be secured from the CPDO for any alteration of the heritage property to ensure that design guidelines and standards are met and shall promote preservation and conservation of the heritage property.

Section 47, paragraph 7 does not apply in this case. The provision requires that "residential and commercial infill *in*

heritage areas will be sensitive to the existing scale and pattern of those areas which maintains the existing landscape and streetscape qualities of those areas, and which does not result in the loss of any heritage resources." Torre de Manila is *not within* a heritage area but within a university cluster zone.

Neither does Section 47, paragraph 9 apply. It is addressed to "local utility companies (hydro, gas, telephone, cable)" who are "required to place metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless telecommunication towers and other utility equipment and devices in locations which do not detract from the visual character of heritage resources, and which do no have negative impact on its architectural integrity." DMCI Project Developers, Inc. is not a local utility company. Neither is it placing any equipment within a historic site or facility.

Section 48, on the other hand, provides:

SEC. 48. Site Performance Standards. – The City considers it in the public interest that all projects are designed and developed in a safe, efficient and aesthetically pleasing manner. Site development shall consider the environmental character and limitations of the site and its adjacent properties. All project elements shall be in complete harmony according to good design principles and the subsequent development must be visually pleasing as well as efficiently functioning especially in relation to the adjacent properties and bordering streets.

The design, construction, operation and maintenance of every facility shall be in harmony with the existing and intended character of its neighborhood. It shall not change the essential character of the said area but will be a substantial improvement to the value of the properties in the neighborhood in particular and the community in general.

Furthermore, designs should consider the following:

1. Sites, buildings and facilities shall be designed and developed with regard to safety, efficiency and high standards of design. The natural environmental character of the site and its adjacent properties shall be considered in the site development of each building and facility.

2. The height and bulk of buildings and structures shall be so designed that it does not impair the entry of light and

ventilation, cause the loss of privacy and/or create nuisances, hazards or inconveniences to adjacent developments.

3. Abutments to adjacent properties shall not be allowed without the neighbor's prior written consent which shall be required by the City Planning and Development Office (CPDO) prior to the granting of a Zoning Permit (Locational Clearance).

4. The capacity of parking areas/lots shall be per the minimum requirements of the National Building Code. These shall be located, developed and landscaped in order to enhance the aesthetic quality of the facility. In no case, shall parking areas/lots encroach into street rights-of-way and shall follow the Traffic Code as set by the City.

5. Developments that attract a significant volume of public modes of transportation, such as tricycles, jeepneys, buses, etc., shall provide on-site parking for the same. These shall also provide vehicular loading and unloading bays so as street traffic flow will not be impeded.

6. Buffers, silencers, mufflers, enclosures and other noise-absorbing materials shall be provided to all noise and vibration-producing machinery. Noise levels shall be maintained according to levels specified in DENR DAO No. 30 - Abatement of Noise and Other Forms of Nuisance as Defined by Law.

7. Glare and heat from any operation or activity shall not be radiated, seen or felt from any point beyond the limits of the property.

8. No large commercial signage and/or pylon, which will be detrimental to the skyline, shall be allowed.

9. Design guidelines, deeds of restriction, property management plans and other regulatory tools that will ensure high quality developments shall be required from developers of commercjal subdivisions and condominiums. These shall be submitted to the City Planning and Development Office (CPDO) for review and approval.

With respect to Section 48, it sets standards for project development to be followed within a "specific site" and its "adjacent properties," *i.e.*, within a specific cluster zone. Torre

de Manila and the Rizal Monument are not adjacent or contiguous properties, nor do they belong to the same cluster zone. Neither is there an existing complaint that DMCI Project Developers, Inc. violated the "environmental character or limitations" of the cluster zone where Torre de Manila is constructed. Section 48, therefore, is inapplicable.

The dissent also adds as legal bases for granting *mandamus* paragraph 1 of Section 45 as well as Section 53 of Ordinance No. 8119 which allegedly provide for "specific operable norms and standards that protect 'views' with 'high scenic quality'":[85]

> SEC. 45. Environmental Conservation and Protection Standards. — It is the intent of the City to protect its natural resources. In order to achieve this objective, all development shall comply with the following regulations:
>
> 1. Views shall be preserved for public enjoyment especially in sites with high scenic quality by closely considering building orientation, height, bulk, fencing and landscaping.
>
> . . . . . .
>
> SEC. 53. Environmental Compliance Certificate (ECC). – Notwithstanding the issuance of zoning permit (locational clearance) Section 63 of this Ordinance, no environmentally critical projects nor projects located in environmentally critical areas shall be commenced, developed or operated unless the requirements of ECC have been complied with.

Sections 45 and 53 of Ordinance No. 8119 concern environmental conservation and protection standards, specifically, the protection of natural resources. Section 45, paragraph 1 relates to protecting views of natural resources. Section 53 requires project developers to secure environmental compliance certificates before commencing or developing environmentally critical projects or projects located in environmentally critical areas.

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[85] *J.* Jardeleza's Dissenting Opinion.

The Rizal Monument is not a natural resource. There is no allegation that Torre de Manila is an environmentally critical project or is located in an environmentally critical area. To apply Sections 45 and 53 of Ordinance No. 8119, as the dissent suggests, is patently strained.

XI

The second and third requisites for the issuance of a writ of mandamus are likewise absent in this case. Respondents have no legal duty to petitioner Knights of Rizal.

The respondent, DMCI Project Developers, Inc. is a private corporation with no legal obligation to petitioner Knights of Rizal. As for public respondents National Historical Commission of the Philippines, the National Museum, the National Commission for Culture and the Arts, and the City of Manila, they are under no legal obligation to stop the construction of Torre de Manila for, as discussed, there is no law requiring the protection of a historical or cultural property's sightline or setting.

XII

Likewise absent is the fourth requisite. The act sought to be performed in this case is not ministerial.

An act is ministerial if the "duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his [or her] own judgment upon the propriety or impropriety of the act done."[86] On the other hand, an act is discretionary if it "gives [the public officer] the right to decide how or when the duty shall be performed."[87]

For respondent DMCI Project Developers, Inc., it is a private corporation not legally or contractually bound to perform any act in favor of petitioner Knights of Rizal.

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[86] *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 707 (2010) [Per *J*. Bersamin, *En Banc*], *citing Espiridion v. Court of Appeals*, G.R. No. 146933, June 8, 2006, 490 SCRA 273.

[87] *Id*.

For respondents National Historical Commission of the Philippines, National Commission for Culture and the Arts, and the National Museum, they have no duty under our present laws to stop the construction of any structure that obstructs the sightline, setting, or backdrop of a historical or cultural heritage or resource. There is no act, whether ministerial or discretionary, that can be required of them.

For respondent City of Manila, the act sought to be performed is discretionary, not ministerial. Under Ordinance No. 8119, the City of Manila is empowered to decide whether or not to grant project developers, such as DMCI Project Developers, Inc., a variance allowing the construction of a structure beyond the prescribed floor-to-area ratio for a specific cluster zone.[88] Here, the City of Manila, through its Sangguniang

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[88] Manila Ordinance 8119, Sec. 60 provides:

SEC. 60. Deviations.– Variances and exceptions from the provisions of this Ordinance may be allowed by the Sangguniang Panlungsod as per recommendation from the Manila Zoning Board of Adjustment and Appeals (MZBAA) through the Committee on Housing, Urban Development and Resettlements only when all the following terms and conditions are obtained/existing:

1. Variance – all proposed projects which do not conformed with the prescribed allowable Land Use Intensity Control (LUIC) in the zone.

a. The property is unique and different from other properties in the adjacent locality and because of its uniqueness, the owner/s cannot obtain a reasonable return on the property.

This condition shall include at least three (3) of the following provisions:

– Conforming to the provisions of the Ordinance will cause undue hardship on the part of the owner or occupant of the property due to physical conditions of the property (topography, shape, *etc*.), which is not self created.

– The proposed variance is the minimum deviation necessary to permit reasonable use of the property.

– The variance will not alter the physical character of the district/zone where the property for which the variance sought is located, and will not substantially or permanently injure the use of the other properties in the same district or zone.

– That the variance will not weaken the general purpose of the Ordinance and will not adversely affect the public health, safety, and welfare.

– The variance will be in harmony with the spirit of this Ordinance.

Panlungsod, decided to grant DMCI Homes, Inc. a variance that allowed the developer to construct a building beyond the floor-to-area ratio of four (4) for structures within a university cluster zone.

Therefore, I disagree with the proposed disposition of this case by the dissent. Justice Jardeleza proposed to dispose of the case with this fallo:

> **WHEREFORE**, let a writ of *mandamus* be issued in this case. Public respondent City of Manila, through its representatives, is directed to **RE-EVALUATE WITH DISPATCH** the permits and variance issued in favor of DMCI-PDI's Torre de Manila project, **DETERMINE APPLICABILITY AND/OR COMPLIANCE WITH** the standards under Sections 45, 53, 47 and 48, and the provisions under Section 60 (in relation to the grant of a variance), of Ordinance No. 8119 and **GRANT THE APPROPRIATE RELIEFS/SANCTIONS** under the law. The TRO issued by this Court shall **REMAIN EFFECTIVE** until the issuance of the final decision in the re-evaluation proceeding to be conducted by the appropriate officials of the City of Manila.[89]

First, ordering the City of Manila to "re-evaluate with dispatch the permits issued in favor of [DMCI Project Developers, Inc.]" is a futile exercise. It does not solve the constitutional issue presented in this case: whether the sightlines and settings of historical or cultural heritage or resources are protected under Sections 15 and 16, Article XIV of the Constitution.

Second, the grant of a building permit or variance is a discretionary act and, in this case, the discretion has already been exercised.

Third, in awaiting the final decision on the re-evaluation process, we are leaving to the City of Manila the effectivity of the temporary restraining order we issued. We are effectively delegating our power to a local government unit, in avoidance of our duty to finally decide this case.

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[89] *J.* Jardeleza's Dissenting Opinion.

XIII

There were other plain, speedy, and adequate remedies in the ordinary course of law available to petitioner Knights of Rizal. As earlier discussed, the Petition should have been filed before the regional trial court to resolve the factual issues involved and for a more adequate and exhaustive resolution of this case.

For instance, questions that can be raised regarding the approval of the variance of the construction from the standard Floor Area Ratio were contained in existing ordinances. These questions were revealed during the oral arguments in this case. Thus:

JUSTICE LEONEN:
You are not aware. Okay, now, in the zoning permit if you look at the floor area, it says, "97,549 square meters," do you confirm this Counsel?

ATTY. LAZATIN

I confirm that, Your Honor.

JUSTICE LEONEN:
And the land area is 7,475 square meters. I understand that this includes right of way?

ATTY. LAZATIN:
That's correct, Your Honor, until an additional lot was added that made the total project area to be 7,556.

JUSTICE LEONEN:
Okay. So, the floor area divided by the land area is 13.05, is that correct? You can get a calculator and compute it, it's 13.05 correct?

ATTY. LAZATIN:
That's correct, Your Honor.

JUSTICE LEONEN:
That is called the FAR?

ATTY. LAZATIN:
Yes, Your Honor.

JUSTICE LEONEN:
Yes, and therefore, when the zoning permit was issued, there was already a variance that was acknowledged by the City Planning Development Office of the City of Manila, is that correct?

ATTY. LAZATIN:
That's right, Your Honor.

JUSTICE LEONEN:
So, in other words, Mr. Resty Rebong approved the application because it fell within four and the variance, is this correct?

ATTY. LAZATIN:
That's our impression, Your Honor.

JUSTICE LEONEN:
May I know what the Ordinance No. or resolution was that authorized Resty Rebong to approve the variance?

ATTY. LAZATIN:
My recollection, Your Honor, it is Section 77 of the . . .

JUSTICE LEONEN:
No, I'm sorry, June 19, 2012, is there a Sangguniang Panlungsod Resolution as of June 19, 2012 because Resty Rebong already said that the variance is okay. Is there a resolution from the City Council on June 19, 2012 approving the variance?

ATTY. LAZATIN:
There was none, Your Honor.

JUSTICE LEONEN:
Again, here, I'm confused. The City Planning and Development Officer approved 97,549 which already includes a variance, but [o]n June 19 when he approved it in 2012, there was no resolution, nor ordinance from the City Council allowing the variance.

ATTY. LAZATIN:
There was none yet at that time, Your Honor.

JUSTICE LEONEN:
As a matter of fact the variance was not there the following month, correct?

ATTY. LAZATIN:
No, Your Honor.

JUSTICE LEONEN:
In November 2012, there was no variance approval, correct?

ATTY. LAZATIN:
None ...

JUSTICE LEONEN:
When DMCI was building the building there was no variance, was that not correct?

ATTY. LAZATIN:
That's correct, Your Honor.

JUSTICE LEONEN:
And the only time that there was a variance that was granted, was in 2013, I am sorry 20... ?

ATTY. LAZATIN:
2014, Your Honor . . .

JUSTICE LEONEN:
2014?

ATTY. LAZATIN:
Yes, Your Honor.

JUSTICE LEONEN:
So, two years after this Resty Rebong approved the zoning permit with the variance but the approval of the variance came later?

ATTY. LAZATIN:
That's correct, Your Honor. If I may be allowed to explain ...

JUSTICE LEONEN:
Can we go to Section 62 of the Ordinance, I am sorry Section 63, you mentioned 62 awhile ago but I think you meant Section 63 of the Manila Comprehensive Land Use Plan and Zoning Ordinance of 2006. There it is, it's projected counsel, because I was confused based upon the questioning of Justice Dado Peralta and I am always confused when he asked questions, that's why I am asking. Now in Section 63 of the Ordinance, it clearly says there, "City Planning Development Officer provides a clearance for all conforming uses and, in cases of variances and exception from the Sangguniang Panlungsod as per recommendation from the MZBAA through the committee on Housing Urban Development and Resettlement prior to conducting any business activity or construction on their property/land." So, in other words, the Ordinance, said that it will not only be forthcoming from the

Sangguniang Panlungsod, there has to be a recommendation from the Manila Zoning Board of Adjustment Appeals who in turn will get a recommendation through the Committee on Housing Urban Development and Resettlement, is this not correct?

ATTY. LAZATIN:
That's correct, Your Honor.

JUSTICE LEONEN:
And prior to means "prior to," "before," "antecedent to," conducting any business activity or construction on their property or lot, correct, Counsel?

ATTY. LAZATIN:
Yes, Your, Honor, may I be?

JUSTICE LEONEN:
Did you sell your property before the action of the Sangguniang Panlungsod?

ATTY. LAZATIN:
Your Honor, there is a difference between the approval of the ... (interrupted)

JUSTICE LEONEN:
Did you build prior to the approval of the Sangguniang Panlungsod as per recommendation of the Manila Zoning Board of Adjustment Appeals?

ATTY. LAZATIN:
Your Honor, if I may be allowed to . . .?

JUSTICE LEONEN:
No, I have a pending question, did you build prior to the issuance of that resolution or ordinance allowing the variance?

ATTY. LAZATIN:
We build, Your Honor, in accordance with what was permitted, Your Honor.

JUSTICE LEONEN:
I am again a bit curious. Section 3(J) of Republic Act 3019, the Anti-Graft and Corruption Practices Law, it says, "knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage," that's a crime, correct?

ATTY. LAZATIN:
Your Honor, may I be allowed to explain?

JUSTICE LEONEN:
No, I'm just confirming if there is such a Section 3, paragraph (J)?

ATTY. LAZATIN:
Your Honor, right now I cannot confirm that, Your Honor.

JUSTICE LEONEN:
Okay.

ATTY. LAZATIN:
May I just be allowed to explain, Your Honor . . .

JUSTICE LEONEN:
Just to clarify the way it went, there was a zoning clearance, on June 2012, the zoning clearance granted a variance, that variance had not yet been approved by the MZBAA, nor the Sangguniang Panlungsod, and DMCI sold property, mobilized in October, pre-sold. And you built starting November, but the Ordinance approving the variance only came in 2013, is that correct?

ATTY. LAZATIN:
That's correct, Your Honor, but may I be allowed to explain, Your Honor, please?

JUSTICE LEONEN:
Yes.

ATTY. LAZATIN:
Your Honor, one, you only go to the MZBAA, Your Honor, when your permit request for zoning permit or locational clearance is denied. In this case, it was granted so, there was no opportunity for us to go to the MZBAA ... (interrupted)

JUSTICE LEONEN:
Counsel ... (interrupted)

ATTY. LAZATIN:
Secondly, allow me to complete, Your Honor, allow me to complete, please, very important, Your Honor.

JUSTICE LEONEN:
Allow me to ask questions because I am the one that is going to vote on this case. Now, the second part of Section 63 it says there,

"prior to conducting any business activity," can you [c]ite to me an ordinance or a section in an Ordinance which says, "the only time that you go to the MZBAA, is when the zoning permit is denied" because I am showing you Section 63?

ATTY. LAZATIN:

Your Honor, you appeal to the MZBAA, Your Honor, for a variance. So if it is granted, what will you appeal? And here, in addition, Your Honor, if I may be allowed to complete my answer, Your Honor, also the records that we have submitted it was the position of the City Planning Development Officer that the executive branch of Manila suspended the Ordinance and they were implementing the Building Code and in fact, Your Honor, they submitted and gave us a copy, Your Honor, of the opinion of the City Legal Officer that it was not necessary and at that time, Your Honor, all the objections to the project were based on heritage, Your Honor.[90]

However, due process requires that these matters be properly pleaded, alleged, and traversed in the proper action.

Petitioner Knights of Rizal could not effectively assail the issuance of a variance to DMCI Project Developers, Inc. in an action in the Supreme Court. Under Section 77 of Ordinance No. 8119, the remedy of filing an opposition to the application for variance before the Manila Zoning Board of Adjustments and Appeals was available to petitioner Knights of Rizal. Section 77 of the Manila Zoning Ordinance provides:

SEC. 77. Action on Complaints and Opposition. — A verified complaint for any violations of any provision of the Zoning Ordinance or of any clearance or permits issued pursuant thereto shall be filed with the [Manila Zoning Board of Adjustments and Appeals].

However, oppositions to application for clearance, variance or exception shall be treated as a complaint and dealt with in accordance with the provision of this section.

Given the foregoing, a writ of *mandamus* against the construction of Torre de Manila does not lie.

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[90] TSN dated August 11, 2015, pp. 48-54.

With petitioner having no clear legal right to the relief sought, there can be no great or irreparable injury[91] to petitioners and the temporary restraining order issued by this Court has no solid ground. Thus, the temporary restraining order must be lifted.

XIV

Even with the consciousness of his impending death, Jose Rizal did not want to be aggrandized. He did not want to be buried and remembered in the way that the petitioner wants him remembered. He wanted a simple grave in Paang Bundok marked with his name, a simple cross and possibly a fence. He did not give instructions for foreign artists to erect his likeness. He probably did not want that likeness to be clothed in an overcoat so that we remember him in the bosom of our colonial masters. He did not leave instructions that his name be used for a national shrine.

Jose Rizal did not even want his death anniversary celebrated.

Like Elias in El Filibusterismo, Rizal wanted to be remembered as an ordinary person, whose death was meaningful because it was the result of his courage to do what was right no matter how fatal the consequences.

Rizal should be valorized because of his humility. He should not be venerated like a saint or a god whose shrines erected in

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[91] RULES OF COURT, Rule 58, Sec. 5 partly provides:

SECTION 5. *Preliminary Injunction Not Granted Without Notice; Exception*. – No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue ex parte a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

his honor is so sacred that it is protected by putative knights in a country that prohibits titles of royalty or nobility.

I suspect that Jose Rizal would have been uncomfortable being in a pantheon of heroes and with a stature that, in the submissions of the petitioner and the Solicitor General, approaches that of a divinity.

The memory of our heroes symbolized by shrines erected in their honor should not be granted so imperial a status so as to arbitrarily waste the material and physical spaces and natural resources of adjoining properties. This is inconsistent with the egalitarian society they may have imagined. It does not square with a more egalitarian view of social justice.

We cannot immortalize our heroes by privileging an angle for a photograph of our shrines while sacrificing the value of the rule of law for the society at present. Good citizenship requires that we never venerate our heroes without any understanding of their context. Rizal was a Filipino, whose principles and convictions gave them the courage to speak truth to power no matter how fatal the consequences. He will still only be one among many.

It is this courage and this humility that we should remember from Rizal's life. These values should be lived. They should persist and survive beyond the frame of a bad photograph.

ACCORDINGLY, I vote to **LIFT** the Temporary Restraining Order and **DISMISS** the Petition.

CONCURRING OPINION

TIJAM, *J.*:

On 12 September 2014, the Knights of Rizal filed a petition for injunction directly with the Supreme Court to halt the construction of the Torre de Manila and have it demolished. Petitioner averred that once finished, said structure would completely dominate the vista of the Rizal Park and substantially diminish in scale and importance our national hero's monument.

It asserted that the project is a nuisance *per se*, constructed in bad faith and in violation of the City of Manila's zoning ordinance.

Private respondent, however, argued that there is absolutely no law, ordinance or rule prohibiting the construction of a building, regardless of height, at the background of the Rizal Park and Rizal Monument, and that Republic Act No. 10066 (National Cultural Heritage Act of 2009) protects merely the physical integrity of national cultural treasures. It denied acting in bad faith and that the Torre de Manila is a nuisance *per se*.

On 25 November 2014, the Supreme Court resolved to treat the petition as one for *mandamus*, and to implead the City of Manila, the National Historical Commission of the Philippines, the National Museum and the National Commission on Culture and the Arts as public respondents.

For the reasons hereinafter set forth, I concur in the result reached by my distinguished colleague, J. Carpio, in his *ponencia*.

No clear legal right for mandamus to issue.

Mandamus is a command issuing from a court of law of competent jurisdiction, in the name of the state or the sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law.[1] *Mandamus* will lie if the tribunal, corporation, board, officer, or person unlawfully neglects the performance of said duty.[2]

It is, thus, essential to the issuance of a writ of *mandamus* that the applicant should have a **clear, certain and well-defined**

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[1] *Star Special Watchman and Detective Agency, Inc., et al. v. Puerto Princesa City, et al.*, G.R. No. 181792, April 21, 2014, citing *Uy Kiao Eng vs. Nixon Lee*, G.R. No. 176831, January 15, 2010.

[2] *Ibid*.

legal right to the thing demanded, and it must be the **clear and imperative duty** of the respondent to perform the act required.[3]

Accordingly, for *mandamus* to issue in this case, it must be shown that petitioner has a well-defined legal right to judicially demand, and public respondents or any of them has the concomitant legal duty to carry out, the preservation of the vista, sightline and setting of the Rizal Park and the Rizal Monument.

Petitioner anchored its petition on Sections 15 and 16, Article XIV[4] of the 1987 Constitution which read:

> Section 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation's historical and cultural heritage and resources, as well as its artistic creations.
>
> Section 16. All the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State which may regulate its disposition.

The foregoing constitutional provisions mandate the conservation, promotion and protection of historical and cultural heritage and resources, but do not specify a clear legal right to the protection of the vista, sightline and setting thereof.

Broadly written, the provisions use the words "conserve," "promote," "popularize" and "protect" which are open to different interpretations, as demonstrated no less by the parties' conflicting positions on their breadth and scope when applied to the construction of the Torre de Manila. The provisions further refer to but do not define what constitutes the nation's "historical and cultural heritage and resources," "artistic creations," and "artistic and historic wealth." The authority given to the State to regulate the disposition of the country's artistic and historic wealth also indicates that further government action is intended

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[3] *Villanueva v. Judicial and Bar Council,* G.R. No. 211833, April 7, 2015; *Ongsuco v. Malones*, G.R. No. 182065, October 27, 2009.

[4] On Education, Science and Technology, Arts, Culture and Sports.

to enforce the constitutional policy of conserving and protecting our heritage resources.

Legislation is, thus, necessary to supply the norms and standards and define the parameters for the implementation of the constitutional protection of historical and cultural heritage and resources.

In this regard, J. Florentino P. Feliciano's separate concurring opinion[5] in the landmark case of *Oposa v. Factoran, Jr.*[6] is illuminating:

> It seems to me important that the legal right which is an essential component of a cause of action be a **specific, operable legal right**, rather than a constitutional or statutory *policy*, for at least two (2) reasons. One is that unless the legal right claimed to have been violated or disregarded is given specification in operational terms, defendants may well be unable to defend themselves intelligently and effectively; in other words, there are **due process** dimensions to this matter.
>
> The second is a broader-gauge consideration — where a specific violation of law or applicable regulation is not alleged or proved, petitioners can be expected to fall back on the expanded conception of judicial power in the second paragraph of Section 1 of Article VIII of the Constitution which reads:
>
> Section 1. . . .
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a *grave abuse of discretion* amounting to lack or excess of jurisdiction *on the part of any branch or instrumentality of the Government*. (Emphasis supplied)

When substantive standards as general as "the right to a balanced and healthy ecology" and "the right to health" are combined with remedial standards as broad ranging as "a grave abuse of discretion amounting to lack or excess of jurisdiction," the result will be, it is

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[5] Subsequently applied in *Pamatong v. COMELEC,* G.R. No. 161872, April 13, 2004.

[6] G.R. No. 101083, July 30,1993.

respectfully submitted, to **propel courts into the uncharted ocean of social and economic policy making**. At least in respect of the vast area of environmental protection and management, our courts have no claim to special technical competence and experience and professional qualification. **Where no specific, operable norms and standards are shown to exist, then the policy making departments — the legislative and executive departments — must be given a real and effective opportunity to fashion and promulgate those norms and standards, and to implement them before the courts should intervene.** *(Emphasis supplied.)*

Similarly, in his Separate Opinion[7] in *Agabon v. National Labor Relations Commission,*[8] J. Dante O. Tinga explained why "the right to security of tenure, while recognized in the Constitution, cannot be implemented uniformly absent a law prescribing concrete standards for its enforcement," thus:

x x x However, to declare that the constitutional provisions are enough to guarantee the full exercise of the rights embodied therein, and the realization of ideals therein expressed, would be impractical, if not unrealistic. The espousal of such view presents the **dangerous tendency of being overbroad and exaggerated**. The guarantees of "full protection to labor" and "security of tenure," when examined in isolation, are facially unqualified, and the broadest interpretation possible suggests a blanket shield in favor of labor against any form of removal regardless of circumstance. This interpretation implies an unimpeachable right to continued employment - a utopian notion, doubtless – but still hardly within the contemplation of the framers. **Subsequent legislation is still needed to define the parameters of these guaranteed rights** to ensure the protection and promotion, not only the rights of the labor sector, but of the employers' as well. Without specific and pertinent legislation, **judicial bodies will be at a loss, formulating their own conclusion to approximate at least the aims of the Constitution**.

Thus, the constitutional mandate expressed in Sections 15 and 16, Article XIV of the Constitution cannot, on its own, be

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[7] Subsequently applied in *Tondo Medical Center Employees Association, et al. v. Court of Appeals, et al.*, G.R. No. 167324, July 17, 2007.

[8] G.R. No. 158693, November 17, 2004.

the source of the avowed right to the preservation of the vista, sightline and setting of the Rizal Park and Rizal Monument.[9]

The ensuing question, therefore, is whether legislation enacted pursuant to said mandate provide for specific and operable norms and standards that extend the constitutional protection to the vista, sightline and setting of historical and cultural heritage and resources. An examination of Philippine statutes relating to heritage preservation reveals no such norms or standards.

Republic Act No. (RA) 10066, known as the National Cultural Heritage Act of 2009, involves the protection of the *physical integrity* of the heritage property or site. This is evident from Sections 25 and 48 of the Act.

Section 25 of RA 10066 authorizes the appropriate cultural agency to issue a Cease and Desist Order *ex parte* "when the *physical integrity* of the national cultural treasures or important cultural properties are found to be in danger of destruction or significant alteration from its original state."[10]

Furthermore, Section 48 of RA 100066, which enumerates the prohibited acts under the law, provides:

Section 48. *Prohibited Acts.* – To the extent that the offense is not punishable by a higher punishment under another

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[9] See Separate Opinion of *J*. Dante O. Tinga in *Agabon v. NLR*C; *Id*.

[10] **Section 25.** *Power to Issue a Cease and Desist Order.*– When the physical integrity of the national cultural treasures or important cultural properties are found to be in danger of destruction or significant alteration from its original state, the appropriate cultural agency shall immediately issue a Cease and Desist Order *ex parte* suspending all activities that will affect the cultural property. The local government unit which has the jurisdiction over the site where the immovable cultural property is located shall report the same to the appropriate cultural agency immediately upon discovery and shall promptly adopt measures to secure the integrity of such immovable cultural property. Thereafter, the appropriate cultural agency shall give notice to the owner or occupant of the cultural property and conduct a hearing on the propriety of the issuance of the Cease and Desist Order. The suspension of the activities shall be lifted only upon the written authority of the appropriate cultural agency after due notice and hearing involving the interested parties and stakeholders.

provision of law, violations of this Act may be made by whoever intentionally:

(a) Destroys, demolishes, mutilates or damages any world heritage **site**, national cultural treasures, important cultural **property** and archaeological and anthropological sites;

(b) Modifies, alters, or destroys the **original features** of or undertakes construction or real estate development **in** any national shrine, monument, landmark and other historic edifices and structures, declared, classified, and marked by the National Historical Institute as such, without the prior written permission from the Commission. This includes the designated security or buffer zone, extending five (5) meters from the visible perimeter of the monument or site;

x x x x x x x x x

Demolition, destruction and mutilation are acts applied upon something physical rather than non-physical such as the view, dominance, vista or sightline of a heritage site or property. Furthermore, the prohibited acts referred to in paragraph (b) applies to the *original features* of the monument or shrine itself or any real estate development *therein*. It will likewise be noted that the security or buffer zone protected under the provision extends only to *five (5) meters* from the visible perimeter of the monument or site. Records show that the Torre de Manila is located about 870 meters outside and to the rear of Rizal Park.

RA 10086 (Strengthening Peoples' Nationalism Through Philippine History Act) empowers the National Historical Commission of the Philippines (NHCP) to "(d)etermine the manner of identification, maintenance, restoration, conservation and preservation of historical sites, shrines, structures and monuments," and to (r)egulate activities pertaining to the preservation, restoration and conservation of historical property or resources."[11] The law, however, does not indicate specific and operable norms and standards for the protection of the vista, sightline or setting of historic monuments and sites.

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[11] Section 7, RA 10086.

Invoked by petitioner, the NHCP's Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and other Personages (Guidelines) provide that monuments should be given due prominence since they symbolize national significance.[12] As a measure to achieve the monument's dominance, the Guidelines state that vista points and visual corridors to monuments should be kept clear for unobstructed viewing appreciation and photographic opportunities.[13] Citing the International Charter for the Conservation and Restoration of Monuments and Sites (Venice Charter), the Guidelines further declare that the conservation of a monument implies preserving a setting which is not out of scale, defining "setting" as not only limited to the exact area directly occupied by the monument, but also to surrounding areas whether open space or occupied by other structures as may be defined by the traditional or juridical expanse of the property.[14]

However, as noted by my esteemed colleagues, J. Leonen and J. Jardeleza, it has not been shown that these Guidelines had been published and a copy thereof deposited with the Office of the National Administrative Register in the University of the Philippines' Law Center. Thus, they cannot be considered effective and binding.[15] Both the requirements of publication and filing of administrative issuances intended to enforce existing laws are mandatory for the effectivity of said issuances.[16] These requirements of publication and filing were put in place as safeguards against abuses on the part of lawmakers and as

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[12] Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and other Personages, *Supra* Note. 1.

[13] *Supra* Note. 2.

[14] *Ibid.*

[15] Sections 3, 4 and 5, Chapter 2 of Book VII of the Administrative Code; *Quezon City PTCA Federation, Inc. v. Department of Education*, G.R. No. 188720, February 23, 2016; *Republic v. Pilipinas Shell Petroleum Corporation,* G.R. No. 173918, April 8, 2008.

[16] *Republic v. Pilipinas Shell Petroleum Corporation*, *Id.,* citing *National Association of Electricity Consumers for Reforms v. Energy Regulatory Board,* G.R. No. 163935, February 2, 2006.

guarantees to the constitutional right to due process and to information on matters of public concern and, therefore, require strict compliance.[17]

In any event, the language of the NHCP Guidelines do not appear to rule out the presence or construction of buildings within the sightline or setting of the historic monument. Thus, the Guidelines provide that: "(t)he monument should *preferably* be the focal point of a city or town center," and the *(f)açade of buildings* around a monument, particularly on a rotunda or circle *can be retrofitted* with a *uniform design* to enhance the *urban renewal* of the site and the prominence and dominance of the monument."[18] Furthermore, the Guidelines allow for *urban renewal projects* and *adaptation* of historic sites *to contemporary life*.[19] It also looks to regulation by the local government of the *design, volume* and *height of buildings surrounding or in the immediate vicinity of the monument/site* to *enhance* the prominence, dominance and dignity of the monument.[20] Such local regulation was notably made to apply to development in the vicinity, both "existing and *future*."[21] In relation to the monument's setting, the Guidelines also state that *new* construction would not be allowed but only if it would alter the relations of mass and color.[22] What it specifically rejects is the encroachment or "direct abutment of structures" into the monument site.[23]

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[17] *Republic v. Pilipinas Shell Petroleum Corporation*, *Id.*

[18] Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and other Personages, item no. 1.

[19] *Supra* Note 11.

[20] *Supra* Note 1 and 11.

[21] Item no. 11 of the Guidelines is captioned "Development of the Vicinity (Existing and Future)."

[22] Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and other Personages, item no. 2.

[23] *Supra* Note 8.

Thus, assuming the Guidelines are effective, they may not be deemed to impose an absolute prohibition against structures erected within the monument's vicinity, sightline or setting, subject only to the structures' compliance with the local government's regulatory restrictions on height, design and volume, and to urban renewal standards.

RA 8492 (National Museum Act of 1998), which tasked the National Museum to supervise the restoration, preservation, reconstruction, demolition, alteration, relocation and remodeling of immovable properties and archaeological landmarks and sites,[24] contains no indication that such duty extended to the preservation of the vista, sightline and setting of cultural properties. RA 8492 was also amended by RA 10066 which distributed the responsibilities over cultural properties among several cultural agencies based on the categorization of the property, and assigned to the National Museum the responsibility for significant movable and immovable cultural and natural property *pertaining to collections of fine arts, archaeology, anthropology, botany, geology, zoology and astronomy*, including its conservation aspect.[25]

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[24] Section 7, RA 8492.

[25] Section 31 of RA 10066 provides that: (a)The Cultural Center of the Philippines shall be responsible for significant cultural property pertaining to the performing arts; (b)The National Archives of the Philippines shall be responsible for significant archival materials; (c)The National Library shall be responsible for rare and significant contemporary Philippine books, manuscripts such as, but not limited to, presidential papers, periodicals, newspapers, singly or in collection, and libraries and electronic records; (d)The National Historical Institute shall be responsible for significant movable and immovable cultural property that pertains to Philippine history, heroes and the conservation of historical artifacts; (e)The National Museum shall be responsible for significant movable and immovable cultural and natural property pertaining to collections of fine arts, archaeology, anthropology, botany, geology, zoology and astronomy, including its conservation aspect; and (f)The Komisyon sa Wikang Filipino shall be responsible for the dissemination development, and the promotion of the Filipino national language and the conservation of ethnic languages.

RA 7356 or the Law Creating the National Commission for the Culture and the Arts (NCCA) mandated the NCCA to "support and promote the establishment and preservation of cultural and historical monuments, markers, names and sites,"[26] and empowered it to "regulate activities inimical to preservation/ conservation of national cultural heritage/properties." It designated the NCCA as the over-all policy-making and coordinating body that will harmonize the policies of national cultural agencies.[27] RA 7356 was amended by RA 10066 which, among others, expanded the authority and responsibility of the NCCA. As previously noted, RA 10066 refers to the protection of the *physical integrity* of the heritage property or site, and does not specify operable norms and standards indicating that the protection extends to its vista, sightline or setting.

The Venice Charter, also invoked by petitioner, provides:

> Article 1.
>
> The concept of a historic monument embraces not only the single architectural work but also the urban or rural setting in which is found the evidence of a particular civilization, a significant development or a historic event. This applies not only to great works of art but also to more modest works of the past which have acquired cultural significance with the passing of time.
>
> x x x x x x x x x
>
> Article 6.
>
> The conservation of a monument implies preserving a setting which is not out of scale. Wherever the traditional setting exists, it must be kept. No new construction, demolition or modification which would alter the relations of mass and colour must be allowed.

The Venice Charter indeed declares that preservation of the setting is integrated in conservation efforts involving historic monuments. However, as pointed out by J. Jardeleza, the Charter does not rise to the level of enforceable law absent any showing of the country's commitment thereto.

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[26] Section 12(b)(3), RA 7356.

[27] Section 23(b), RA 7356.

In any event, it cannot be said that the Venice Charter provides specific, operable norms and standards, or sufficient parameters, to hold that the setting of the Rizal Monument, in particular, was not preserved by reason of the subject building. By its language, the Charter merely laid down basic and guiding "principles," "with each country being responsible for *applying the plan within the framework of its own culture and traditions*." Thus, even assuming that the Philippines committed to adhere to said principles, the Charter cannot, by itself, be the basis for the *mandamus* sought.

In fine, a clear legal right to the protection of the vista, sightline and setting of the Rizal Monument and the Rizal Park has not been established in legislation as an aspect of the constitutional policy to conserve, promote and protect historical and cultural heritage and resources. It is settled that legislative failure to pursue state policies cannot give rise to a cause of action in the courts.[28]

During the deliberations on this case, it was posited that while existing statutes show no clear and specific duty on the part of public respondents to regulate, much less, prohibit the construction of structures that obstruct the view, sightline or setting of the Rizal Monument, Manila's zoning ordinance (Ordinance No. 8119) imposes such duty on the City Government of Manila under the guidelines and standards prescribed in Sections 47 and 48 thereof.

Sections 47 and 48 of Ordinance No. 8119, in pertinent part, state:

> Sec. 47. **Historical Preservation and Conservation Standards**. – Historical sites and facilities shall be conserved and preserved. x x x
>
> The following shall guide the development of historic sites and facilities:
>
> 1. Sites with historic buildings or places shall be developed to conserve and enhance their heritage values.

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[28] *Espina, et al. v. Zamora, et al.*, G.R. No. 143855, 21 September 2010.

2. x x x x x x x x x

3. Any person who proposes to add, to alter, or partially demolish a designated heritage property will require the approval of the City Planning and Development Office (CDPO) and shall be required to prepare a heritage impact statement that will demonstrate to the satisfaction of the CPDO that the proposal will not adversely impact the heritage significance of the property and shall submit plans for review by the CPDO in coordination with the National Historical Institute (NHI).

4. Any proposed alteration and/or re-use of designated heritage properties shall be evaluated based on criteria established by the heritage significance of the particular property or site.

5. x x x x x x x x x

6. x x x x x x x x x

7. Residential and commercial infill in heritage areas will be sensitive to the existing scale and pattern of those areas, which maintains the existing landscape and streetscape qualities of those areas, and which does not result in the loss of any heritage resources.

8. Development plans shall ensure that parking facilities (surface lots, residential garages, stand-alone parking garages and parking components as part of larger developments) are compatibly integrated into heritage areas, and/or are compatible with adjacent heritage resources.

9. Local utility companies (hydro-gas, telephone, cable) shall be required to place metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless telecommunication towers and other utility equipment and devices in locations which do not detract from the visual character of heritage resources, and which do not have negative impact on its architectural integrity.

10. Design review approval shall be secured from the CPDO for any alteration of heritage property to ensure that design guidelines and standards are met and shall promote preservation and conservation of the heritage property. (*Underscoring supplied.*)

Sec. 48. **Site Performance Standards**. The City considers it in the public interest that all projects are designed and developed

in a safe, efficient and aesthetically pleasing manner. Site development shall consider the environmental character and limitations of the site and its adjacent properties. All project elements shall be in complete harmony according to good design principles and the subsequent development must be pleasing as well as efficiently functioning especially in relation to the adjacent properties and bordering streets.

The design, construction, operation and maintenance of every facility shall be in harmony with the existing and intended character of its neighborhood. It shall not change the essential character of the said area but will be a substantial improvement to the value of the properties in the neighborhood in particular and the community in general.

Furthermore, designs should consider the following:

1. Sites, buildings and facilities shall be designed and developed with regard to safety, efficiency and high standards of design. The natural environmental character of the site and its adjacent properties shall be considered in the site development of each building and facility.

2. The height and bulk of buildings and structures shall be so designed that it does not impair the entry of light and ventilation, cause the loss of privacy and/or create nuisances, hazards or inconveniences to adjacent developments.

3. x x x x x x x x x

4. x x x x x x x x x

5. x x x x x x x x x

6. x x x x x x x x x

7. x x x x x x x x x

8. No large commercial signage or pylon, which will be detrimental to the skyline, shall be allowed.

9. Design guidelines, deeds of restriction, property management plans and other regulatory tools that will ensure high quality developments shall be required from developers of commercial subdivisions and condominiums. These shall be submitted to the City Planning and Development Office (CPDO) for review and approval. (*Underscoring supplied.*)

An examination of Section 47 of Ordinance No. 8119, however, will reveal that the guidelines set therein refer to *the historical site or the heritage area itself*, or to the physical integrity of the *designated heritage property*. Thus, Section 47 speaks of the conservation and enhancement of the heritage value of the historical site; it also refers to the alteration, demolition and re-use of designated heritage properties, and development plans within the heritage area. In fact, it is expressly prefaced by a statement alluding to the enumeration as guidelines in the "development of *historic sites and facilities*."

Records show that Torre de Manila is located in the University Cluster Zone, 870 meters outside and to the rear of Rizal Park. The zone is not a historical site, a heritage area, or a designated heritage property. Thus, Section 47 of Ordinance No. 8119 will not apply.

Section 48 of Ordinance No. 8119, which enumerates the "Site Performance Standards," appears to apply to all development projects in the City of Manila. It requires that the development project should be "aesthetically pleasing" and "in harmony with the existing and intended character of its neighborhood," and that it should consider the "natural environmental character of the site and its adjacent properties."

The neighborhood within which the Torre de Manila is situated is the University Cluster Zone. Furthermore, the building is not adjacent to or adjoining the Rizal Park or the Rizal Monument. By the language of Section 48, the "adjacent properties" mentioned therein would refer to properties adjoining the Torre de Manila site within the University Cluster Zone, such that "harmony with the existing and intended character of the neighborhood" would be achieved. It is, thus, doubtful that Section 48 provides norms and standards intended to preserve the sightline or setting of the Rizal Monument.

It has been held that *mandamus* will not issue to enforce a right which is in substantial dispute or as to which a substantial doubt exists.[29]

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[29] *Uy Kiao Eng v. Lee,* G.R. No. 176831, January 15, 2010.

Even assuming that Ordinance No. 8119 extends protection to the vista, sightline or setting of a historical site or property, it does not specify the paramaters by which the City Development and Planning Office (CDPO) shall determine compliance, thereby giving the CDPO wide discretion in ascertaining whether or not a project preserves the heritage site or area.

Under the guidelines and standards of Sections 47 and 48 of Ordinance No. 8119, development projects: should conserve and enhance the heritage value of the historic site; should not adversely impact the heritage significance of the heritage property; should not result in the loss of any heritage resources; should not detract from the visual character of heritage resources; and should be aesthetically pleasing.

There are no parameters, definitions or criteria to ascertain how heritage value is deemed to have been conserved and enhanced, what adversely impacts the heritage significance of a property, what sufficiently detracts from the visual character of a heritage property, and what is aesthetically pleasing. The absence of such parameters creates considerable room for subjective interpretation and use of discretion that could amount to an undue delegation of legislative power.

Two tests determine the validity of delegation of legislative power: (1) the completeness test and (2) the sufficient standard test. Under the first test or the so-called completeness test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate, *the only thing he will have to do is to enforce it*. The second test or the sufficient standard test, mandates that there should be adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot.[30]

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[30] *ABAKADA Guro Party List Officers/Members Samson S. Alcantara, et al. v. Purisima, et al.,* G.R. No. 166715, August 14, 2008; *Equi-Asia Placement, Inc. v. Department of Foreign Affairs*, *et al*., G.R. No. 152214, September 19, 2006.

By their language and provisions, Sections 47 and 48 of Ordinance No. 8119 fail to comply with the completeness test.

A writ of *mandamus* can be issued only when petitioner's legal right to the performance of a particular act which is sought to be compelled is **clear and complete**. A clear legal right is a right which is **indubitably granted by law** or is inferable as a matter of law.[31] No clear and complete legal right to the protection of the vista, sightline and setting of the Rizal Park and Rizal Monument has been shown to exist.

The Court cannot, in the guise of interpretation, enlarge the scope of a statute or insert into a statute what the legislature omitted, whether intentionally or unintentionally.[32] To read into an ordinance objects which were neither specifically mentioned nor enumerated would be to run afoul of the dictum that where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters.[33] Thus, in *Canet v. Mayor Decena,*[34] the Court explained:

> Even on the assumption that there is in fact a legislative gap caused by such an omission, neither could the Court presume otherwise and supply the details thereof, because **a legislative lacuna cannot be filled by judicial fiat**. Indeed, **courts may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers**. An omission at the time of the enactment, whether careless or calculated, cannot be judicially supplied however after later wisdom may recommend the inclusion. **Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention has been called to the omission.**

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[31] *Carolino v. Senga, et al.*, G.R. No. 189649, April 20, 2015.

[32] *Bases Conversion and Development Authority v. Commission on Audit,* G.R. No. 178160, February 26, 2009.

[33] *Canet v. Mayor Decena,* G.R. No. 155344, January 20, 2004.

[34] *Supra*, note 32.

Courts should not, by construction, revise even the most arbitrary and unfair action of the legislature, nor rewrite the law to conform with what they think should be the law. **Nor may they interpret into the law a requirement which the law does not prescribe.** Where a statute contains no limitations in its operation or scope, courts should not engraft any. And where a provision of law expressly limits its application to certain transactions, it cannot be extended to other transactions by interpretation. To do any of such things would be to do violence to the language of the law and to invade the legislative sphere. (*Emphasis supplied*.)

In the absence of a clear legal right to the protection of the vista, sightline and setting of the Rizal Monument, and the concomitant legal duty to enforce such right, *mandamus* will not lie. The writ of *mandamus* will not issue to compel an official to do anything which is not his duty to do or which it is his duty not to do, or to give to the applicant anything to which he is not entitled by law.[35]

Direct recourse to the Supreme Court was improper.

An important principle followed in the issuance of the writ of *mandamus* is that there should be **no plain, speedy and adequate remedy in the ordinary course of law** other than the remedy of mandamus being invoked. In other words, mandamus can be issued only in cases where the usual modes of procedure and forms of remedy are powerless to afford relief.[36]

Petitioner brought this case to the Supreme Court, arguing that that the Torre de Manila was being constructed in violation of the zoning ordinance. Petitioner claims that the City of Manila violated the height restrictions under Ordinance No. 8119 when it granted private respondent a variance almost six (6) times the seven (7)-floor height limit in a University Cluster Zone. Petitioner notes that at 22.83% completion, or at the height of

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[35] S*tar Special Watchman and Detective Agency, Inc., et al. v. Puerto Princesa City, et al.*, *supra*, citing *Uy Kiao Eng v. Nixon Lee, supra,* note 28.

[36] *Uy Kiao Eng v. Lee*, *supra*, note 28.

nineteen (19) floors, as of 20 August 2014, the structure already obstructs the vista of the Rizal Park and the Rizal Monument.

Section 77 of Ordinance No. 8119, however, expressly provides for a remedy in case of violation of its provisions; it allows for the filing of a verified complaint before the Manila Zoning Board of Assessment and Appeals for any violation of the Ordinance or of any clearance or permits issued pursuant thereto, including oppositions to applications for clearances, variance or exception.

The general rule is that before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the courts' judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case.[37]

An exception to said rule is when the issue raised is a purely legal question, well within the competence and the jurisdiction of the court and not the administrative agency.[38]

It is clear, however, that factual issues are involved in this case. The calculation of the maximum allowable building height, the alleged violation of existing regulations under Ordinance

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[37] *Ongsuco v. Malones*, *supra* note 3.

[38] *Ibid.*

No. 8119, and the existence or non-existence of the conditions[39] for approval of a variance by reason of non-conformity with the height restrictions, are questions of fact which the City of Manila could pass upon under Section 77 of Ordinance No. 8119.

Likewise, whether or not the Torre de Manila is a nuisance, and whether or not private respondent acted in good faith, are factual issues that should not have been raised at the first instance before this Court.

The Supreme Court is not a trier of facts and it is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. More so, this Court is not duty-bound to analyze and weigh evidence pertaining to factual issues which have not been subject of any proper proceedings below.[40]

Any judicial intervention should have been sought at the first instance from the Regional Trial Court which has the authority to resolve constitutional issues,[41] more so where questions of fact are involved.

A direct recourse to this Court is highly improper for it violates the established policy of strict observance of the judicial hierarchy

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[39] Under Section 60 of Ordinance No. 8119, variances by reason of non-conformity with the Percentage of Land Occupancy and Floor Area Ratio provisions (which determine the height restriction) may be allowed by the City Council upon recommendation of the Manila Zoning Board of Adjustment and Appeals, subject to the following qualifications: (1) conformity will cause undue hardship due to the physical conditions of the property (topography, shape, *etc*.) which are not self-created; (2) the proposed variance is the minimum deviation necessary to permit reasonable use of the property; (3) the variance will not alter the physical character of the district/zone where the property is located, and will not substantially or permanently injure the use of other properties therein; (4) the variance will not weaken the general purpose of the Ordinance and will not adversely affect public health, safety and welfare; and (5)the variance will be in harmony with the spirit of the Ordinance.

[40] *Hipolito v. Cinco,* G.R. No. 174143, November 28, 2011.

[41] *Planters Products, Inc. v. Fertiphil Corporation,* G.R. No. 166006, March 14, 2008; *Ongsuco v. Malones, supra* note 3.

of courts. While we have concurrent jurisdiction with the Regional Trial Courts and the Court of Appeals to issue the extraordinary writs, this concurrence is not to be taken as an unrestrained freedom of choice as to which court the application for the writ will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. This Court is a court of last resort and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution and immemorial tradition.[42]

Mandamus cannot compel the performance of a discretionary act.

A key principle to be observed in dealing with petitions for *mandamus* is that such extraordinary remedy lies to compel the performance of duties that are **purely ministerial** in nature, not those that are discretionary. A purely ministerial act or duty is one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of its own judgment upon the propriety or impropriety of the act done. The duty is ministerial only when its discharge requires neither the exercise of official discretion or judgment.[43]

In issuing permits to developers and in granting variances from height restrictions, the City of Manila exercises discretion and judgment upon a given set of facts. Such acts are not purely ministerial functions that can be compelled by *mandamus*.

Petitioner failed to comply with requisites for judicial review.

Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations. The following

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[42] *Anillo v. Commission on the Settlement of Land Problems, et al*., G.R. No. 157856, September 27, 2007; Section 4, Rule 65, Rules of Court.

[43] *Special People, Inc. v. Canda, et al.,* G.R. No. 160932, January 14, 2013.

requisites must be complied with before this Court can take cognizance of the case: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[44]

Petitioner failed to show its legal standing to file the case.

This Court, in determining *locus standi,* has applied the "direct injury" test which requires that for a private individual to invoke the judicial power to determine the validity of an executive or legislative action, **he must show that he has sustained a direct injury as a result of that action. It is not sufficient that he has a general interest common to all members of the public.**[45]

Accordingly, locus standi or legal standing has been defined as a **personal and substantial interest** in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.[46]

Jurisprudence defines interest as "material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. By real interest is meant a **present substantial interest**, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest."[47]

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[44] *In Re Supreme Court Judicial Independence v. Judiciary Development Fund,* UDK-15143, January 21, 2015; *Biraogo v. The Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010.

[45] *In Re Supreme Court Judicial Independence v. Judiciary Development Fund,* UDK-15143 *(Resolution), supra*, *note 43, citing David, et al. v. Macapagal-Arroyo, et al.,* G.R. No. 171396, May 3, 2006.

[46] *Galicto v. Aquino*, *et al*., G.R. No. 193978, February 28, 2012.

[47] *Ibid*.

By the foregoing standards, petitioner cannot be considered to have satisfied the "direct injury" test.

Petitioner alleged that it is a public, non-profit organization created under RA 646, and pursuant to its mandate, it conducts activities at the Rizal Park to commemorate Jose Rizal's birth and martyrdom at least twice a year. Petitioner asserted that its legal mandate to celebrate Rizal's life was violated on account of private respondent's Torre de Manila project which continue to mar the previously unobstructed view of the Rizal Park. Such interest, however, cannot be said to be personal and substantial enough to infuse petitioner with the requisite *locus standi*. It certainly is not a present or immediate interest, as petitioner's commemorative activities are not constantly conducted in the Rizal Park.

The experience of looking at the vista of the Rizal Park and the Rizal Monument and finding it marred by the subject structure does not give rise to a substantial and personal injury that will give *locus standi* to petitioner to file this case. It is what can be considered as an incidental, if not a generalized, interest. Generalized interests, albeit accompanied by the assertion of a public right, do not establish *locus standi.*[48] Evidence of a direct and personal interest is key.[49]

The rule on *locus standi* is not a plain procedural rule but a constitutional requirement derived from Section 1, Article VIII of the Constitution, which mandates courts of justice to settle *only* "actual controversies involving rights which are legally demandable and enforceable."[50] This Court, in *Lozano v. Nograles,*[51] explained:

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[48] *Southern Hemisphere Engagement Network, Inc., et al. v. Anti-Terrorism Council, et al.*, G.R. No. 178552, October 5, 2010.

[49] *Ibid.*

[50] *Lozano v. Nograle*s, G.R. No. 187883, June 16, 2009.

[51] G.R. No. 187883, June 16, 2009, citing the Dissent of then Associate Justice Reynato S. Puno in *Kilosbayan, Incorporated v. Guingona, Jr.,* G.R. No. 113375, 5 May 1994.

x x x [C]ourts are neither free to decide *all* kinds of cases dumped into their laps nor are they free to open their doors to *all* parties or entities claiming a grievance. The rationale for this constitutional requirement of *locus standi* is by no means trifle. It is intended "to assure a vigorous adversary presentation of the case, and, perhaps more importantly to warrant the judiciary's overruling the determination of a coordinate, democratically elected organ of government." It thus goes to the very essence of representative democracies.

x x x x x x x x x

A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.

Petitioner has likewise failed to justify an exemption from the *locus standi* rule on grounds of "transcendental importance."

In *Galicto v. Aquino*,[52] this Court held that "even if (it) could have exempted the case from the stringent *locus standi* requirement, such heroic effort would be futile because the transcendental issue could not be resolved any way, **due to procedural infirmities and shortcomings**." The Court explained that giving due course to a petition saddled with such formal and procedural infirmities would be "an exercise in futility that does not merit the Court's liberality."[53]

As hereinbefore discussed, it was error for petitioner to have filed this case directly before the Supreme Court, as other plain, speedy and adequate remedies were still available and the case indubitably involves questions of fact. Thus, the resolution of any transcendental issue in this case will be rendered futile by

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[52] G.R. No. 193978, February 28, 2012, citing *Velarde v. Social Justice Society,* G.R. No. 159357, April 28, 2004.

[53] *Ibid.*

reason of these procedural infirmities. Furthermore, it could not escape this Court's attention that what petitioner filed before this Court was, in fact, a petition for injunction over which the Court does not exercise original jurisdiction.[54]

While the Court has taken an increasingly liberal approach to the rule of *locus standi*, evolving from the stringent requirements of personal injury to the broader transcendental importance doctrine, such liberality is not to be abused.[55]

Indeed, the "transcendental importance" doctrine cannot be loosely invoked or broadly applied, for as this Court previously explained:

> **In the final scheme, judicial review is effective largely because it is not available simply at the behest of a partisan faction, but is exercised only to remedy a particular, concrete injury.** When warranted by the presence of indispensable minimums for judicial review, this Court shall not shun the duty to resolve the constitutional challenge that may confront it. *(Emphasis supplied.)*

Thus, this Court, in the recent case of *Roy v. Herbosa,*[56] held that an indiscriminate disregard of the requisites for this Court's judicial review, every time "transcendental or paramount importance or significance" is invoked would result in unacceptable corruption of the settled doctrine of *locus standi* as every worthy cause is an interest shared by the general public.

Petitioner has also failed to present a justiciable controversy.

An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract

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[54] Article VIII of the Constitution provides:

Sec. 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari, prohibition, mandamus, quo warranto, and habeas corpus.*

(2) x x x x x x x x x

[55] *Lozano v. Nograles*, *supra*, note 49.

[56] G.R. No. 207246, November 22, 2016.

difference or dispute. **There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.** The Court can decide the constitutionality of an act or treaty only when a proper case between opposing parties is submitted for judicial determination.[57]

The existence of an actual case or controversy, thus, presupposes the presence of legally enforceable rights. In this case, petitioner asserts that it has the right to stop the construction of the Torre de Manila on the strength of Sections 15 and 16, Article XIV of the Constitution, which requires the State to conserve and protect the nation's historical and cultural heritage and resources. Petitioner argues that heritage preservation includes the sightline and setting of the Rizal Park and Rizal Monument.

However, as hereinbefore shown, neither the Constitution nor existing legislation, including Manila's Ordinance No. 8119, provides for specific and operable norms and standards that give rise to a judicially enforceable right to the protection of the vista, sightline and setting of the Rizal Park and Rizal Monument.

Furthermore, related to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the **petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action. It must show that it has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of**.[58]

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[57] *The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain, et al.,* G.R. No. 183591, October 14, 2008.

[58] *Ibid*.

As previously discussed, petitioner has failed to show that it has sustained or is immediately in danger of sustaining a direct injury as a result of the construction of the Torre de Manila.

In sum, absent a clear legal right to the protection of the vista, sightline and setting of the Rizal Park and Rizal Monument, and for petitioner's failure to establish its legal standing and the existence of an actual controversy ripe for judicial adjudication, *mandamus* will not lie.

Accordingly, I vote to **DISMISS** the petition.

DISSENTING OPINION

JARDELEZA, *J.*:

> *Heritage is our legacy from the past, what we live with today, and what we pass on to future generations. Our cultural and natural heritage are both irreplaceable sources of life and inspiration.*[1]
>
> *The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. - Justice William O. Douglas in Berman v. Parker*[2]
>
> *To make us love our country, our country ought to be lovely. – Edmund Burke*

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[1] About World Heritage, UNESCO World Heritage Centre, <http://whc.unesco.org/en/about/> (last accessed June 14, 2016).

[2] 348 U.S. 26, 33 (1954).

The Rizal Park and the Rizal Monument lie at the heart of this controversy. Petitioner Knights of Rizal (KOR) instituted this original action for injunction to stop what it views as "an impending permanent desecration of a National Cultural Treasure that is the Rizal Monument and a historical, political, socio-cultural landmark that is the Rizal Park."[3] According to KOR, once finished at its highest level, the Torre de Manila will dwarf all surrounding buildings within a radius of two kilometers and "**completely dominate the vista and consequently, substantially diminish in scale and importance the most cherished monument to the National Hero**."[4] Further alleging that the project is a nuisance *per se* and constructed in bad faith and in violation of the zoning ordinance of the City of Manila, KOR prayed, among others, for the issuance of an injunction to restrain construction of the Torre de Manila, and for an order for its demolition.[5]

In this case of first impression, the Court was asked to determine the constitutional dimensions of Sections 15 and 16, Article XIV of the Constitution. These Sections mandate the State to conserve and protect our nation's historical and cultural heritage and resources. We should decide this case conscious that we here exercise our symbolic function as an aspect of our power of judicial review.[6] Ours is a heavy burden; how we decide today will define our judicial attitude towards the constitutional values of historic and cultural preservation and protection, involving as they often do fragile and irreplaceable sources of our national identity.

The majority has voted to dismiss the petition.

With respect, I dissent.

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[3] *Rollo*, p. 3.

[4] *Id.* at 23.

[5] *Id.* at 27-28.

[6] *Alliance of Government Workers v. Minister of Labor and Employment*, G.R. No. 60403, August 3, 1983, 124 SCRA 1, 9-10.

I

I shall first discuss the procedural issues.

A.

Petitioner KOR filed a petition for injunction, an action not embraced within our original jurisdiction.[7] As correctly pointed out by DMCI-PDI, actions for injunction lie within the jurisdiction of the RTC pursuant to Sections 19 and 21 of Batas Pambansa Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980," as amended.[8]

Nevertheless, I submit that the circumstances of this case warrant a relaxation of the rule.

First. KOR's petition appears to make a case for *mandamus*.

Section 3, Rule 65 of the Rules of Court provides:

> Sec. 3. *Petition for mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

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[7] CONSTITUTION, Art. VIII, Sec. 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus, quo warranto*, and *habeas corpus*; x x x.

[8] *Rollo*, pp. 308-309 citing *Bank of the Philippine Islands v. Hong*, G.R. No. 161771, February 15, 2012, 666 SCRA 71.

A writ of *mandamus* is a command issuing from a court of law of competent jurisdiction, directed to some inferior court, tribunal, or board, requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law.[9] For a petition for *mandamus* to prosper, petitioner must establish the existence of a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required.[10] In *University of San Agustin, Inc. v. Court of Appeals*,[11] we stated:

> **While it may not be necessary that the duty be absolutely expressed, it must however, be clear.** The writ will not issue to compel an official to do anything which is not his duty to do or which is his duty not to do, or give to the applicant anything to which he is not entitled by law. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.[12] (Emphasis supplied).

Here, KOR's case is essentially founded on Sections 15 and 16, Article XIV of the Constitution giving rise to an alleged duty on the part of respondent DMCI-PDI to protect (or, at the very least, refrain from despoiling) the nation's heritage. In *Uy Kiao Eng v. Lee*, we held that *mandamus* is a "proper recourse for citizens who seek to enforce a public right and to compel the performance of a public duty, most especially when the public right involved is mandated by the Constitution."[13]

More importantly, a relaxation of procedural rules is warranted considering the significance of the threshold and purely legal

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[9] *Uy Kiao Eng v. Lee*, G.R. No. 176831, January 15, 2010, 610 SCRA 211, 216-217.

[10] *Henares, Jr. v. Land Transportation Franchising and Regulatory Board*, G.R. No. 158290, October 23, 2006, 505 SCRA 104, 115 citing *University of San Agustin, Inc. v. Court of Appeals*, G.R. No. 100588, March 7, 1994, 230 SCRA 761, 771.

[11] G.R. No. 100588, March 7, 1994, 230 SCRA 761.

[12] *Id.* at 771-772.

[13] *Uy Kiao Eng v. Lee, supra* at 217.

question involved in this case. As identified in the Court's Advisory, this threshold and purely legal question is: "**whether the definition of the Constitutional mandate to conserve, promote and popularize the nation's historical and cultural heritage and resources, includes, in the case of the Rizal Monument, the preservation of its prominence, dominance, vista points, vista corridors, sightlines and setting**."[14] Apropos to this, I proposed that the Court also decide: (2) whether there are laws, statutes, ordinances, and international covenants that implement this mandate and which were breached as a result of the construction of the Torre de Manila; and (3) whether *mandamus* lies against public respondents.

In *Gamboa v. Teves*,[15] an original petition for prohibition, injunction, declaratory relief, and declaration of nullity was filed to stop the sale of shares of Philippine Telecommunications Investment Corporation (PTIC) stock to Metro Pacific Assets Holdings, Inc. (MPAH), a foreign owned corporation. The sale, if allowed, would increase to 81% the common shareholdings of foreigners in Philippine Long Distance Telephone Company (PLDT), beyond the allowed constitutional limit on foreign ownership of a public utility. In *Gamboa*, this Court acknowledged that it had no original jurisdiction over the petition for declaratory relief, injunction, and annulment of sale filed by petitioners therein.[16] Nevertheless, in view of the threshold and purely legal issue on the definition of the term "capital" in Section 11, Article XII of the Constitution which had **far-reaching implications to the national economy**, this Court treated the petition as one for *mandamus*.[17]

Gamboa cited two other precedents where we had relaxed procedural rules and assumed jurisdiction over a petition for declaratory relief — *Salvacion v. Central Bank of the*

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[14] *Rollo*, pp. 1229-1230.

[15] G.R. No. 176579, June 28, 2011, 652 SCRA 690.

[16] *Id.* at 705-706.

[17] *Id.* at 706-709.

Philippines[18] and *Alliance of Government Workers v. Minister of Labor and Employment*.[19]

Salvacion presented the issue of whether the protection afforded to foreign currency deposits can be made applicable to a foreign transient. *Alliance of Government Workers*, on the other hand, involved the issue of whether government agencies are considered "employers" under a law requiring payment of 13th month pay to certain employees. As in *Gamboa*, in both cases, we ruled that while we had no original jurisdiction over the petitions *as filed*, "exceptions to this rule have been recognized." In *Salvacion*, we declared: "where the petition has far-reaching implications and raises questions that should be resolved, it may be treated as one for *mandamus*."[20] More, as in *Alliance of Government Workers*, "considering the important issues propounded and the fact that constitutional principles are involved," we decided "to give due course to the petition, to consider the various comments as answers and to resolve the questions raised through a full length decision in the exercise of this Court's symbolic function as an aspect of the power of judicial review."[21] *Alliance of Government Workers*, in turn, cited as precedent the earlier cases *Nacionalista Party v. Bautista*[22] and *Aquino, Jr. v. Commission on Elections*.[23] There we also relaxed the application of procedural rules and treated the petition for prohibition filed as one for *quo warranto* in view of "peculiar and extraordinary circumstances" and "far-reaching implications" attendant in both cases.

Here, the Court's judicial power has been invoked to determine the extent of protection afforded by the Constitution and our

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[18] G.R. No. 94723, August 21, 1997, 278 SCRA 27.

[19] G.R. No. 60403, August 3, 1983, 124 SCRA 1.

[20] *Salvacion v. Central Bank of the Philippines, supra* at 39-40.

[21] *Alliance of Government Workers v. Minister of Labor and Employment, supra* at 9-10.

[22] 85 Phil. 101 (1949).

[23] G.R. No. L-40004, January 31, 1975, 62 SCRA 275.

laws, if any, over cultural heritage properties. Our resolution of this issue will settle whether the Constitution's heritage conservation provisions are self-executing, and if not, whether the State has translated them into judicially enforceable norms through enabling legislation. Similar to *Gamboa, Salvacion*, and *Alliance of Government Workers*, I find that this case presents serious constitutional issues of far-reaching implications and significance warranting a liberal application of procedural rules.

B.

Legal standing (*locus standi*) is defined as "a right of appearance in a court of justice on a given question."[24] In *Belgica v. Ochoa, Jr.*, we explained that "[t]he gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."[25]

While rules on standing in public suits have in some cases been relaxed especially in relation to non-traditional plaintiffs like citizens, taxpayers, and legislators,[26] we have generally adopted the "direct injury test" to determine whether a party has the requisite standing to file suit. Under this test, for a party to have legal standing, it must be shown that he has suffered or will suffer a direct injury as a result of the act being challenged,[27] that is, he must show that: (1) he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable

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[24] *Biraogo v. Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010, 637 SCRA 78, 149-150 citing *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160, 216.

[25] G.R. No. 208566, November 19, 2013, 710 SCRA 1, 99. (Citations omitted.)

[26] *Arigo v. Swift*, G.R. No. 206510, September 16, 2014, 735 SCRA 102, 128.

[27] *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160, 217-218 citing *People v. Vera*, 65 Phil. 56 (1937).

to the challenged action; and (3) the injury is likely to be redressed by a favorable action.[28]

I am of the view that petitioner KOR sufficiently meets the requirements of the direct injury test.

Petitioner KOR is a public, non-profit organization created under Republic Act No. 646,[29] one of whose main purposes include the organization and holding of programs to commemorate Rizal's nativity and martyrdom.[30] These programs honoring the birth and death of our national hero are held by KOR at the Rizal Park at least twice a year.[31] During oral arguments, counsel for KOR asserted that there is a violation of KOR's legal mandate, as stated in its articles of incorporation, to celebrate the life of Jose Rizal at the Rizal Park insofar as the Torre de Manila mars the Park's previously "unhampered" and "unobstructed" panorama.[32]

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[28] *Tolentino v. Commission on Elections*, G.R. 148334, January 21, 2004, 420 SCRA 438, 452.

[29] An Act to Convert the "Orden de Caballeros de Rizal" into a Public Corporation to be known in English as "Knights of Rizal" and in Spanish as "Orden de Caballeros de Rizal," and to Define its Purposes and Powers, Sec. 2. See also *Rollo*, p. 5.

[30] Republic Act No. 646, Sec. 2.

[31] TSN, July 21, 2015, pp. 13-14.

[32] TSN, July 21, 2015, pp. 13-14:

> **JUSTICE JARDELEZA:** Now, do you organize and hold programs to commemorate the birth and death of Dr. Jose Rizal?
>
> **ATTY. JASARINO:** Yes, Your Honor, we do.
>
> **JUSTICE JARDELEZA:** And where do you hold these programs?
>
> **ATTY. JASARINO:** Rizal Park, Your Honor.
>
> **JUSTICE JARDELEZA:** You have been there yourself.
>
> **ATTY. JASARINO:** Yes, Your Honor.
>
> **JUSTICE JARDELEZA:** How often do you do this?
>
> **ATTY. JASARINO:** Talking of nativity and martyrdom, at least, twice a year.

Sierra Club v. Morton[33] recognized that "[a]esthetic and environmental wellbeing, like economic wellbeing, are important ingredients of the quality of life in our society," similarly deserving of legal protection such that direct injury may be rooted on the destruction of "the scenery, natural and historic objects and wildlife of the park, and would impair the enjoyment of the park for future generations."[34] While the US Supreme Court refused to grant standing to Sierra Club due to the latter's failure to allege that "it or its members would be affected in any of their activities or pastimes by the [challenged] Disney development,"[35] the same is not true here. KOR has sufficiently demonstrated that it has suffered (or stands to suffer) a direct injury on account of the allegedly "illegal" condominium project insofar as KOR's regular commemorative activities in the Park have been (and continues to be) marred by the allegedly unsightly view of the Torre de Manila.

In any case, where compelling reasons exist, such as when the matter is of common and general interest to all citizens of the Philippines;[36] when the issues are of paramount importance and constitutional significance;[37] when serious constitutional

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> **JUSTICE JARDELEZA:** And how does, again, the Torre injure you or the organization in the [discharge] of this specific corporate purpose?
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> **ATTY. JASARINO:** I cannot imagine having the celebrations, the programs with Torre at the back. I cannot imagine that activity to be inspiring, to be reminding us of Rizal, of his works, of his ideals while looking at Torre marring the background that we used to have, the panorama that is unhampered, that is unobstructed. (Underscoring supplied.)

[33] 405 U.S. 727 (1972).

[34] *Id.* at 734.

[35] *Id.* at 735.

[36] *Oposa v. Factoran, Jr.*, G.R. No. 101083, July 30, 1993, 224 SCRA 792, 802.

[37] *Bagong Alyansang Makabayan v. Zamora*, G.R. No. 138570, October 10, 2000, 342 SCRA 449, 480.

questions are involved;[38] or there are advance constitutional issues which deserve our attention in view of their seriousness, novelty, and weight as precedents,[39] this Court, in the exercise of its sound discretion, has brushed aside procedural barriers and taken cognizance of the petitions before us. The significant legal issues raised in this case far outweigh any perceived impediment in the legal personality of petitioner KOR to bring this suit.[40]

II

I shall now discuss the substantive issues raised in the petition.

A.

Petitioner KOR invokes Sections 15 and 16, Article XIV of the Constitution as bases for its claim that there is a constitutional "obligation of the State" to protect the Rizal Monument.[41] The Court has consequently identified the threshold legal issue to be whether Sections 15 and 16, Article XIV of the Constitution extend protection to the Rizal Monument and/or its prominence, dominance, vista points, vista corridors, sightlines, and setting. To me, the resolution of this issue largely depends on whether these sections are self-executing and thus judicially enforceable "in their present form."[42] I will thus discuss these issues together.

Sections 15 and 16, Article XIV of the Constitution read:

Sec. 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation's historical and cultural heritage and resources, as well as artistic creations.

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[38] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343, 364-365.

[39] *Tolentino v. Commission on Elections, supra* at 453-454.

[40] *Gamboa v. Teves, supra* note 15, at 713

[41] *Rollo*, pp. 15-16.

[42] See *Oposa v. Factoran, Jr., supra* at 816-817 (Feliciano, *J.*, *concurring*).

Sec. 16. All the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State which may regulate its disposition.

In constitutional construction, it is presumed that constitutional provisions are self-executing. The reason is that "[i]f the constitutional provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law."[43] This, however, does not make *all* constitutional provisions immediately self-executing.

In *Basco v. Philippine Amusement and Gaming Corporation*,[44] we held that Sections 11 (Personal Dignity), 12 (Family), and 13 (Role of Youth) of Article II; Section 12 (Social Justice and Human Rights) of Article XIII and Section 2 (Educational Values) of Article XIV of the 1987 Constitution are merely statements of principles and policies. They are not self-executing and would need a law to be passed by Congress to clearly define and effectuate such principles.

Three years later, in the 1994 case of *Tolentino v. Secretary of Finance*,[45] we held that the constitutional directives under Section 1, Article XIII (Social Justice and Human Rights) and Section 1, Article XIV (Education) to give priority to the enactment of laws for the enhancement of human dignity, the reduction of social, economic and political inequalities, and the promotion of the right to "quality education" were put in the fundamental law "as moral incentives to legislation, not as judicially enforceable rights."[46] In the subsequent case of *Kilosbayan, Inc. v. Morato*,[47] we held that the provisions under Article II (Declaration of State Principles and Policies)

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[43] *Manila Prince Hotel v. Government Service Insurance System*, G.R. No. 122156, February 3, 1997, 267 SCRA 408, 431-432.

[44] G.R. No. 91649, May 14, 1991, 197 SCRA 52.

[45] G.R. No. 115455, August 25, 1994, 235 SCRA 630.

[46] *Id.* at 684-685.

[47] G.R. No. 118910, July 17, 1995, 246 SCRA 540.

of the Constitution are not self-executing provisions, "the disregard of which can give rise to a cause of action in the courts. They do not embody judicially enforceable constitutional rights but guidelines for legislation."[48] In *Tañada v. Angara*,[49] we affirmed that far from being provisions ready for enforcement through the courts, the sections found under Article II are there to be "used by the judiciary as aids or as guides in the exercise of its power of judicial review, and by the legislature in its enactment of laws."[50]

To determine whether a provision is self-executory, the test is to see whether the provision is "complete in itself as a definitive law, or if it needs future legislation for completion and enforcement."[51] In other words, the provision must set forth "a specific, operable legal right, rather than a constitutional or statutory *policy*."[52] Justice Feliciano, in his Separate Opinion in the landmark case of *Oposa v. Factoran*, explained:

> It seems to me important that the legal right which is an essential component of a cause of action be a specific, operable legal right, rather than a constitutional or statutory *policy*, for at least two (2) reasons. One is that unless the legal right claimed to have been violated or disregarded is given specification in operational terms, defendants may well be unable to defend themselves intelligently and effectively; in other words, there are due process dimensions to this matter.
>
> The second is a broader-gauge consideration-where a specific violation of law or applicable regulation is not alleged or proved, petitioners can be expected to fall back on the expanded conception of judicial power in the second paragraph of Section 1 of Article VIII of the Constitution x x x.

When substantive standards as general as "the right to a balanced and healthy ecology" and "the right to health" are

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[48] *Id.* at 564.

[49] G.R. No. 118295, May 2, 1997, 272 SCRA 18.

[50] *Id.* at 54.

[51] *Agabon v. National Labor Relations Commission*, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 688 (Tinga, *J.*, *concurring*).

[52] *Oposa v. Factoran, Jr., supra* note 36, at 817.

combined with remedial standards as broad ranging as "a grave abuse of discretion amounting to lack or excess of jurisdiction," the result will be, it is respectfully submitted, to propel courts into the uncharted ocean of social and economic policy making. At least in respect of the vast area of environmental protection and management, our courts have no claim to special technical competence and experience and professional qualification. **Where no specific, operable norms and standards are shown to exist, then the policy making departments — the legislative and executive departments — must be given a real and effective opportunity to fashion and promulgate those norms and standards, and to implement them before the courts should intervene.**[53] (Emphasis supplied.)

Following this test, I am of the view that Sections 15 and 16, Article XIV of the Constitution invoked by petitioner KOR are **not** self-executing provisions. These provisions relied upon by KOR, *textually and standing alone*, do **not** create any judicially enforceable right and obligation for the preservation, protection or conservation of the "prominence, dominance, vista points, vista corridors, sightlines and setting" of the Rizal Park and the Rizal Monument.

Similar to those constitutional provisions we have previously declared to be non-self-executing, Sections 15 and 16 are mere statements of principle and policy. The constitutional exhortation to "conserve, promote, and popularize the nation's historical and cultural heritage and resources," lacks "specific, operable norms and standards" by which to guide its enforcement.[54] Enabling legislation is still necessary to define, for example, the scope, permissible measures, and possible limitations of the State's heritage conservation mandate. Congress, in the exercise of its plenary power, is alone empowered to decide whether and how to conserve and preserve historical and cultural property. As in the situation posed by Justice Feliciano, Sections 15 and 16, by themselves, will be of no help to a defendant in an actual case for purposes of

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[53] *Id.* at 817-818.

[54] See *Agabon v. National Labor Relations Commission, supra* (Tinga, *J.*, *concurring*).

preparing an intelligent and effective defense. These sections also lack any comprehensible standards by which to guide a court in resolving an alleged violation of a right arising from the same.

The view that Sections 15 and 16 are not self-executing provisions is, in fact, supported by the deliberations of the Constitutional Commission, insofar as they reveal an intent to direct Congress to enact a law that would provide guidelines for the regulation as well as penalties for violations thereof.[55] In particular, during the interpellation of Commissioner Felicitas Aquino, one of the proponents of the provision on heritage conservation, she conceded that there is a need for supplementary statutory implementation of these provisions.[56]

Petitioner KOR also claimed that the Torre de Manila project (1) "violates" the National Historical Commission of the Philippines (NHCP) "Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages" which "guidelines have the force of law" and (2) "runs afoul" an "international commitment" of the Philippines under the International Charter for the Conservation and Restoration of Monuments and Sites, otherwise known as the Venice Charter.[57]

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[55] IV RECORD, CONSTITUTIONAL COMMISSION 558-560 (September 11, 1986).

[56] *Id.*

[57] *Rollo*, pp. 19-20.

> 5.10 This PROJECT blatantly violates the National Historical Commission of the Philippines' "Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages" which guidelines have the force of law. The said guidelines dictate that historic monuments should assert a visual "dominance" over the surroundings by the following measures, among others
>
> DOMINANCE
>
> (i) Keep vista points and visual corridors to monuments clear for unobstructed viewing and appreciation and photographic opportunities;
>
> (ii) Commercial buildings should not proliferate in a town center where a dominant monument is situated;

I disagree.

The NHCP Guidelines is neither law nor an enforceable rule or regulation. Publication[58] and filing with the Law Center of the University of the Philippines[59] are indispensable requirements for statutes, including administrative implementing rules and regulations, to have binding force and effect.[60] As correctly

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SITE AND ORIENTATION

(i) The conservation of a monument implies preserving a setting, which is not out of scale. Wherever the traditional setting exists, it must be kept. No new construction, demolition or modification, which would alter the relations of mass and color, must be allowed.

(ii) The setting is not only limited with the exact area that is directly occupied by the monument, but it extends to the surrounding areas whether open space or occupied by other structures as may be defined by the traditional or juridical expense of the property.

5.11 The PROJECT also runs afoul of an international commitment of the Philippines, the International Charter for the Conservation and Restoration of Monuments and Sites, otherwise known as the Venice Charter.

That agreement says, in part, as follows:

ARTICLE 1. The concept of an historic monument embraces not only the single architectural work but also the urban or rural setting in which is found the evidence of a particular civilization, a significant development or a historic event. This applies not only to great works of art but also to more modest works of the past which have acquired cultural significance with the passing of time.

x x x x x x x x x

ARTICLE 6. The conservation of a monument implies preserving a setting which is not out of scale. Wherever the traditional setting exists, it must be kept. No new construction, demolition or modification which would alter the relations of mass and colour, must be allowed. (Underscoring in the original.)

[58] *Tañada v. Tuvera*, G.R. No. 63915, December 29, 1986, 146 SCRA 446, 453-454.

[59] ADMINISTRATIVE CODE, Book VII, Chapter 2, Sec. 3.

[60] *Republic v. Pilipinas Shell Petroleum Corporation*, G.R. No. 173918, April 8, 2008, 550 SCRA 680, 689.

pointed out by respondent DMCI-PDI, no showing of compliance with these requirements appears in this case. The NHCP Guidelines cannot thus be held as binding against respondent.

Similarly, neither can the Venice Charter be invoked to prohibit the construction of the Torre de Manila project. The Venice Charter provides, in general terms, the steps that must be taken by State Parties for the conservation and restoration of monuments and sites, including these properties' setting. It does not, however, rise to a level of an enforceable law. There is no allegation that the Philippines has legally committed to observe the Venice Charter. Neither am I prepared to declare that its principles are norms of general or customary international law which are binding on all states.[61] I further note that the terms of both the NHCP Guidelines and the Venice Charter appear hortatory and do not claim to be sources of legally enforceable rights. These documents only urge (not require) governments to adopt the principles they espouse through implementing laws.[62]

Nevertheless, the Venice Charter and the NHCP Guidelines, along with various conservation conventions, recommendations, and resolutions contained in multilateral cooperation and agreements by State and non-state entities, do establish a

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[61] See *Pharmaceutical and Health Care Association of the Philippines v. Duque*, G.R. No. 173034, October 9, 2007, 535 SCRA 265.

[62] The NHCP Guidelines, for example, reads in pertinent part:

> 11. DEVELOPMENT OF THE VICINITY (EXISTING AND FUTURE)
>
> It is highly recommended that towns and cities formulate zoning guidelines or local ordinances for the protection and development of monument sites and the promotion of a clean and green environment, and strictly implement these laws, especially in places where important monuments and structures are located.
>
> A buffer zone should be provided around the vicinity of monuments/sites, and should be made part of the respective city or municipal land use and zoning regulations through local legislation.
>
> Height of buildings surrounding or in the immediate vicinity of the monument/site should be regulated by local building code regulation or special local ordinance to enhance the prominence, dominance and dignity of the monument, more importantly, the national monuments.

significant fact: **At the time of the enactment of our Constitution in 1987, there has already been a *consistent* understanding of the term "conservation" in the culture, history, and heritage context as to cover not only a heritage property's physical/tangible attributes, but also its settings (*e.g.*, its surrounding neighborhood, landscapes, sites, sight lines, skylines, visual corridors, and vista points).**

The setting of a heritage structure, site, or area is defined as "the immediate and extended environment that is part of, or contributes to, its significance and distinctive character."[63] It is also referred to as "the surroundings in which a place is experienced, its local context, embracing present and past relationships to the adjacent landscape."[64] It is further acknowledged as one of the sources from which heritage structures, sites, and areas "derive their significance and distinctive character."[65] Thus, any change to the same can "substantially or irretrievably affect" the significance of the heritage property.[66]

The concept of settings was first formalized with the Xi'an Declaration on the Conservation of the Setting of Heritage Structures, Sites and Areas adopted by the 15th General Assembly of International Council on Monuments and Sites (ICOMOS) on October 21, 2005. The concept itself, however, has been acknowledged decades before, with references to settings, landscapes, and surroundings **appearing as early as 1962**.[67]

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[63] Xi'an Declaration on the Conservation of the Setting of Heritage Structures, Sites and Areas, par 1. [hereinafter "Xi'an Declaration"]

[64] ICOMOS Guidance on Heritage Impact Assessments for Cultural World Heritage Properties, par. 5-3.

[65] Xi'an Declaration, par. 2.

[66] Xi'an Declaration, par. 9.

[67] UNESCO Recommendation concerning the Safeguarding of the Beauty and Character of Landscapes and Sites (1962). See International Charter for the Conservation and Restoration of Monuments and Sites (1964 Venice Charter), UNESCO Recommendation concerning the Preservation of Property Endangered by Public or Private Works (1968), Recommendation concerning

To reiterate, my examination of the various multilateral and international documents on the subject shows a generally-accepted and oft-repeated understanding of "heritage conservation" as covering *more* than a cultural property's physical attributes to include its surroundings and settings.[68] This "understanding" had, unarguably, already acquired "term of art" status even before the enactment of our Constitution in 1987. *Verba artis ex arte.* Terms of art should be explained from their usage in the art to which they belong.[69]

To me, absent proof of a clear constitutional expression to the contrary, the foregoing understanding of heritage conservation provide more than sufficient justification against *a priori* limiting the plenary power of Congress to determine, through the enactment of laws, the scope and extent of heritage conservation in our jurisdiction. Otherwise put, the Congress *can* choose to legislate that protection of a cultural property extends beyond its physical attributes to include its surroundings, settings, view, landscape, dominance, and scale. This flows from the fundamental principle that the Constitution's grant of legislative power to Congress is plenary, subject only to certain defined limitations, such as those found in the Bill of Rights and the due process clause of the Constitution.[70]

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the Protection, at National Level, of the Cultural and Natural Heritage (1972), UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage, otherwise known as the World Heritage Convention (1972), Declaration of Amsterdam (1975), UNESCO Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas (1976), ICOMOS Committee for Historic Gardens (1981), Charter for the Conservation of Historic Towns and Urban Areas (1987), among others.

[68] *See* Takahiro Kenjie C. Aman & Maria Patricia R. Cervantes-Poco, *What's in a Name?: Challenges in Defining Cultural Heritage in Light of Modern Globalization*, 60 ATENEO L.J. 965 (2016).

[69] BLACK'S LAW DICTIONARY 1200 (1995). *See* Laurence H. Tribe, I *AMERICAN CONSTITUTIONAL LAW* 60 (2000). *See also* Dante Gatmaytan, *LEGAL METHOD ESSENTIALS* 46 (2012) citing *Francisco, Jr. v. House of Representatives*, G.R. No. 160261, November 10, 2003, 415 SCRA 44.

[70] See *Vera v. Avelino*, 77 Phil. 192 (1946).

B.

Having established that Sections 15 and 16, Article XIV of the Constitution invoked by petitioner KOR are not self-executing constitutional provisions, I will discuss the existing laws or statutes that can be sources of judicially demandable rights for purposes of the ends sought to be attained by petitioner.

a.

Over the years, Congress has passed a number of laws to carry out the constitutional policy expressed in Sections 15 and 16, Article XIV of the Constitution. Conservation and preservation have, notably, been recurring themes in Philippine heritage laws.

Republic Act No. 4368,[71] enacted in 1965 and which created the National Historical Commission, declared it the duty, among others, of the Commission to "identify, designate, and appropriately mark historic places in the Philippines and x x x to maintain and care for national monuments, shrines and historic markets x x x."[72] A year later, Republic Act No. 4846, otherwise known as the "Cultural Properties Preservation and Protection Act," was passed declaring it an explicit state policy to "preserve and protect the important x x x cultural properties x x x of the nation and to safeguard their intrinsic value."[73]

Republic Act No. 7356[74] (RA 7356) later declared that culture is a "manifestation of the freedom of belief and of expression," and "a human right to be accorded due respect and allowed to flourish."[75] Thus, it was provided that:

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[71] An Act to Establish a National Historical Commission, to Define Its Powers and Functions, Authorizing the Appropriation of Funds Therefore, and for Other Purposes (1965).

[72] Republic Act No. 4368, Sec. 4(e).

[73] Republic Act No. 4846, Sec. 2.

[74] Law Creating the National Commission for Culture and the Arts (1992).

[75] Republic Act No. 7356, Sec. 2.

Sec. 3. *National Identity*. – Culture reflects and shapes values, beliefs, aspirations, thereby defining a people's national identity. **A Filipino national culture that mirrors and shapes Philippine economic, social and political life shall be evolved, promoted and conserved.**

Sec. 7. *Preservation of the Filipino Heritage*. – **It is the duty of every citizen to preserve and conserve the Filipino historical and cultural heritage and resources.** The retrieval and **conservation** of artifacts of Filipino culture and history shall be vigorously pursued. (Emphasis and underscoring supplied.)

With RA 7356, Congress created the National Commission for Culture and the Arts (NCCA) which had, among its principal mandates, the **conservation** and promotion of the nation's historical and cultural heritage.[76] Later on, Republic Act No. 8492[77] (RA 8492) was enacted, converting the National Museum (NM) into a trust of the government whose primary mission includes the acquisition, **preservation**, and exhibition of works of art, specimens and cultural and historical artifacts.[78] Our National Building Code also prohibits the construction of signboards which will "obstruct the natural view of the landscape x x x or otherwise defile, debase, or offend the **aesthetic and cultural values** and traditions of the Filipino people."[79]

Republic Act No. 10066[80] (RA 10066) and Republic Act No. 10086[81] (RA 10086) are heritage laws of recent vintage which

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[76] Republic Act No. 7356, Sec. 12(b).

[77] National Museum Act of 1998.

[78] Republic Act No. 8492, Sec. 3.

[79] Republic Act No. 6541, Chapter 10.06, Sec. 10.06.01: *General* —

(a) No signs or signboards shall be erected in such a manner as to confuse or obstruct the view or interpretation of any official traffic sign signal or device.
(b) No signboards shall be constructed as to unduly obstruct the **natural view of the landscape**, distract or obstruct the view of the public as to constitute a traffic hazard, or **otherwise defile, debase, or offend the aesthetic and cultural values and traditions of the Filipino people**. (Emphasis supplied.)

[80] National Cultural Heritage Act of 2009.

[81] Strengthening Peoples' Nationalism Through Philippine History Act (2009).

further affirm the mandate to protect, **preserve, conserve,** and promote the nation's historical and cultural heritage and resources.[82] Section 2 of RA 10066, for example, reads:

> Sec. 2. *Declaration of Principles and Policies*. – Sections 14, 15, 16 and 17, Article XIV of the 1987 Constitution declare that the State shall foster the preservation, enrichment and dynamic evolution of a Filipino culture based on the principle of unity in diversity in a climate of free artistic and intellectual expression. The Constitution likewise mandates the State to conserve, develop, promote and popularize the nation's historical and cultural heritage and resources, as well as artistic creations. It further provides that all the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State, which may regulate its disposition.
>
> In the pursuit of **cultural preservation as a strategy for maintaining Filipino identity**, this Act shall pursue the following objectives:
>
> **(a) Protect, preserve, conserve and promote the nation's cultural heritage, its property and histories, and the ethnicity of local communities;**
>
> (b) Establish and strengthen cultural institutions; and
>
> (c) Protect cultural workers and ensure their professional development and well-being.
>
> The State shall likewise endeavor to create a balanced atmosphere where the historic past coexists in harmony with modern society. **It shall approach the problem of conservation in an integrated and holistic manner, cutting across all relevant disciplines and technologies.** The State shall further administer the heritage resources in a **spirit of stewardship** for the inspiration and benefit of the present and future generations. (Emphasis and underscoring supplied.

According to the City of Manila, "[u]nobstructed viewing appreciation and photographic opportunities have not risen to the level of a legislated right or an imposable obligation in connection with engineering works or even cultural creations."[83]

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[82] Republic Act No. 10066, Sec. 2 and Republic Act No. 10086, Sec. 2.

[83] *Rollo*, p. 435.

The NHCP, for its part, claims that there is "no law or regulation [which] imposes a specific duty on [the part of] the NHCP to issue a Cease and Desist Order (CDO) to protect the view of the Rizal Monument and Rizal Park."[84] Even assuming that views are protected, the NHCP claims that it is the City of Manila in the exercise of its police power — not the NHCP — that should pass legislation to protect the Rizal Park and Rizal Monument.[85]

DMCI-PDI maintains that there is "absolutely no law, ordinance or rule prohibiting the construction of a building, regardless of height, at the background of the Rizal Monument and the Rizal Park."[86] It argues that RA 10066, the law passed by Congress to implement the constitutional mandate of heritage conservation, "does not include provisions on the preservation of the prominence, dominance, vista points, vista corridors, sightlines, and settings of historical monuments like the Rizal Monument."[87] It further claims that what RA 10066 protects is merely the *physical* integrity of national cultural treasures and important cultural properties "by authorizing the issuance of CDOs pursuant to Section 25 of the law."[88]

In my view, respondents are only PARTLY correct.

My reading of the foregoing statutes shows no *clear and specific* duty on the part of public respondents NCCA, NM, or NHCP to regulate, much less, prohibit the construction of the Torre de Manila project on the ground that it adversely affects the view, vista, sightline, or setting of the Rizal Monument and the Rizal Park.[89]

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[84] *Id.* at 2428.

[85] *Id.* at 2440.

[86] *Id.* at 3213.

[87] *Id.* at 1279.

[88] *Id.*

[89] Considering the pendency of Civil Case No. 15-074 (before the Regional Trial Court in Makati City) and G.R. No. 222826 (before this Court), we shall refrain from discussing the matter of the propriety of the NCCA's issuance of a CDO at this time.

Nevertheless, there *is* to me existing *local* legislation implementing the constitutional mandate of heritage conservation. Ordinance No. 8119 provides for a clear and specific duty on the part of the City of Manila to regulate development projects insofar as these may adversely affect the view, vista, sightline, or setting of a cultural property within the city.

b.

Republic Act No. 7160, otherwise known as the Local Government Code, vests local government units with the powers to enact ordinances to promote the general welfare, which it defines to include:

> Sec. 16. *General Welfare*. – Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. **Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture**, promote health and safety, **enhance the right of the people to a balanced ecology**, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants. (Emphasis supplied.)

It also provides that zoning ordinances serve as the primary and dominant bases for the use of land resources.[90] These are enacted by the local legislative council as part of their power and duty to promote general welfare,[91] which includes the division

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[90] Republic Act No. 7160, Sec. 20(c).

[91] The pertinent portions of the Local Government Code provide:
Sec. 458. *Powers, Duties, Functions and Compensation*. - **The sangguniang panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants**

of a municipality/city into districts of such number, shape, and area as may be deemed best suited to carry out the stated purposes, and within such districts "regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied x x x."[92]

Ordinance No. 8119 is a general zoning ordinance similar to the one upheld by the United States Supreme Court in the case of *Village of Euclid v. Ambler Realty Co.*[93] as a valid exercise of police power. The validity of a municipal ordinance dividing the community into zones was challenged in that case on the ground that "it violates the constitutional protection to the right of property x x x by attempted regulations under the guise of the police power, which are unreasonable and confiscatory."[94] The US Supreme Court there stated that:

> **pursuant to Section 16 of this Code** and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall:
>
> (1) Approve ordinances and pass resolutions necessary for an efficient and effective city government, and in this connection, shall:
>
> x x x x x x x x x
>
> (ix) Enact integrated zoning ordinances in consonance with the approved comprehensive land use plan, subject to existing laws, rules and regulations; establish fire limits or zones, particularly in populous centers; and regulate the construction, repair or modification of buildings within said fire limits or zones in accordance with the provisions of the Fire Code;
>
> x x x x x x x x x
>
> (4) **Regulate activities relative to the use of land, buildings and structures within the city in order to promote the general welfare**
>
> x x x x x x x x x.
>
> (Emphasis supplied.)

[92] Donald G. Hagman & Julian Conrad Juergensmeyer, *URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW* 55 (1986) [hereinafter "HAGMAN & JUERGENSMEYER"].

[93] 272 U.S. 365 (1926).

[94] *Id.* at 386.

Building zone laws are of modern origin. They began in this country about twenty-five years ago. Until recent years, urban life was comparatively simple; but with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities. Regulations the wisdom, necessity and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive. Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and unreasonable. And in this there is no inconsistency, for, while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world, it is impossible that it should be otherwise. x x x[95]

This Court has similarly validated the constitutionality of zoning ordinances in this jurisdiction.[96] In *Victorias Milling Co., Inc. v. Municipality of Victorias, Negros Occidental*,[97] we held that an ordinance carries with it the presumption of validity. In any case, the validity of Ordinance No. 8119, while subsequently raised by petitioner KOR as an issue, can be challenged only in a direct action and not collaterally.[98] While the question of

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[95] *Id.* at 386-387.

[96] *Gancayco v. City Government of Quezon*, G.R. No. 177807, October 11, 2011, 658 SCRA 853; *Social Justice Society v. Atienza, Jr.*, G.R. No. 156052, February 13, 2008, 545 SCRA 92; *United BF Homeowners' Association, Inc. v. City Mayor of Parañaque*, G.R. No. 141010, February 7, 2007, 515 SCRA 1; *Sangalang v. Intermediate Appellate Court*, G.R. No. 71169, December 22, 1988, 168 SCRA 634; *People v. De Guzman*, 90 Phil. 132 (1951); *Tan Chat v. Municipality of Iloilo*, 60 Phil. 465 (1934); *Seng Kee & Co. v. Earnshaw*, 56 Phil. 204 (1931); *People v. Cruz*, 54 Phil. 24 (1929).

[97] G.R. No. L-21183, September 27, 1968, 25 SCRA 192 cited in *Smart Communications, Inc. v. Municipality of Malvar, Batangas*, G.R. No. 204429, February 18, 2014, 7I6 SCRA 677.

[98] *Solicitor General v. Metropolitan Manila Authority*, G.R. No. 102782, December 11, 1991, 204 SCRA 837, 842.

its reasonableness may still be subject to a possible judicial inquiry in the future,[99] Ordinance No. 8119 is presumptively valid and must be applied.

Ordinance No. 8119, *by its terms*, contains specific, operable norms and standards that implement the constitutional mandate to conserve historical and cultural heritage and resources. **A plain reading of the Ordinance would show that it sets forth specific historical preservation and conservation standards which *textually* reference "landscape and streetscape,"[100] and "visual character"[101] in specific relation to the conservation of historic sites and facilities located within the City of Manila.** We quote:

> Sec. 47. Historical Preservation and Conservation Standards. - **Historic sites and facilities shall be conserved and preserved.** These shall, to the extent possible, be made accessible for the educational and cultural enrichment of the general public.
>
> The following shall guide the development of historic sites and facilities:
>
> **1.** **Sites** with **historic** buildings or **places** shall be developed to conserve and enhance their **heritage values**.
>
> 2. Historic sites and facilities shall be adaptively re-used.
>
> 3. Any person who proposes to add, to alter, or partially demolish a **designated heritage property** will require the approval of the City Planning and Development Office (CPDO) and shall be required to prepare a heritage impact statement that will **demonstrate to the satisfaction of the CPDO that the proposal will not adversely impact the heritage significance of the property and shall submit plans for review by the CPDO in coordination with the National Historical Institute (NHI).**
>
> 4. Any proposed alteration and/or re-use of designated heritage properties shall be evaluated based on criteria established

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[99] *Id.*

[100] Ordinance No. 8119, Sec. 47(7).

[101] Ordinance No. 8119, Sec. 47(9).

by the **heritage significance** of the particular property or site.

5. Where an owner of a heritage property applies for approval to demolish a designated heritage property or properties, the owner shall be required to provide evidence to satisfaction that demonstrates that rehabilitation and re-use of the property is not viable.

6. Any designated heritage property which is to be demolished or significantly altered shall be thoroughly documented for archival purposes with a history, photographic records, and measured drawings, in accordance with accepted heritage recording guidelines, prior to demolition or alteration.

7. Residential and commercial infill in heritage areas will be sensitive to the existing scale and pattern of those areas, which **maintains the existing landscape and streetscape qualities of those areas**, and which does not result in the **loss of any heritage resources**.

8. Development plans shall ensure that parking facilities (surface lots, residential garages, stand-alone parking garages and parking components as parts of larger developments) are compatibly integrated into heritage areas, and/or are compatible with adjacent heritage resources.

9. Local utility companies (hydro, gas, telephone, cable) shall be required to place metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless telecommunication towers and other utility equipment and devices in locations **which do not detract from the visual character of heritage resources, and which do not have negative impact on its architectural integrity**.

10. Design review approval shall be secured from the CPDO for any alteration of the heritage property to ensure that design guidelines and standards are met and shall promote preservation and conservation of the heritage property. (Emphasis and underscoring supplied.)

Section 47, *by its terms*, provides the standards by which to "guide the development of historic sites and facilities," which include, among others, consideration of the "existing landscape, streetscape and visual character" of heritage properties and

resources. Under Section 47, the following matters are issues for consideration: (1) whether a certain property is considered a historic site, area and facility which has heritage value and significance; (2) whether the proposed development adds to or alters a historic site, area and facility; (3) whether a proposed development adversely impacts the heritage significance of a historic site, area or facility; (4) whether a project proponent needs to submit a heritage impact statement (HIS) and plans for review; and (5) whether the CPDO is required to coordinate with the respondent NHCP in assessing a proposed development's adverse impact, if any, to the heritage significance of a historic site, area, and facility.

Petitioner KOR asserted that the Rizal Park is "sacred ground in the historic struggle for freedom"[102] and the Rizal Monument is a "National Cultural Treasure."[103] It alleged that respondent DMCI-PDI's Torre de Manila condominium project will have an "adverse impact" by ruining the sightline of the Rizal Park and Rizal Monument thereby diminishing its value,[104] scale, and importance.[105] To my mind, petitioner's foregoing allegations should be sufficiently addressed by the City upon due consideration of the standards expressed under Section 47.

In fact, Ordinance No. 8119 contains *another* provision that declares it in "the public interest" that all projects be designed in an "aesthetically pleasing" manner. It makes express and specific reference to "existing and intended character of [a] neighborhood,"[106] "natural environmental character" of its neighborhood, and "skyline,"[107] among others. Section 48 mandates consideration of skylines as well as "the existing and intended character of the neighborhood" where the proposed facility is to be located, thus:

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[102] *Rollo*, p. 10.

[103] *Id.* at 12.

[104] *Id.* at 13.

[105] *Id.* at 23.

[106] Ordinance No. 8119, Sec. 48(2).

[107] Ordinance No. 8119, Sec. 48(8).

Sec. 48. Site Performance Standards. - The City considers it in the **public interest** that all **projects** are designed and developed in a safe, efficient and **aesthetically pleasing manner**. Site development shall consider the environmental character and limitations of the site and its adjacent properties. All project elements shall be in complete harmony according to good design principles and **the** subsequent development must be **pleasing** as well as efficiently functioning especially in relation to the adjacent properties and bordering streets.

The design, construction, operation and maintenance of every facility shall be in harmony with the existing and intended character of its neighborhood. It shall not change the essential character of the said area but will be a substantial improvement to the value of the properties in the neighborhood in particular and the community in general.

Furthermore, designs should consider the following:

> 1. Sites, buildings and facilities shall be designed and developed with regard to safety, efficiency and high standards of design. **The natural environmental character of the site and its adjacent properties shall be considered in the site development of each building and facility.**
>
> 1. The height and bulk of buildings and structures shall be so designed that it does not impair the entry of light and ventilation, cause the loss of privacy and/or create nuisances, hazards or inconveniences to adjacent developments.
>
> x x x x x x x x x
>
> 8. No large commercial signage and/or pylon, which will be detrimental **to the skyline**, shall be allowed.
>
> 9. Design guidelines, deeds of restriction, property management plans and other regulatory tools that will ensure high quality developments shall be required from developers of commercial subdivisions and condominiums. These shall be submitted to the City Planning and Development Office (CPDO) for review and approval. (Emphasis and underscoring supplied.)

Under the pertinent provisions of Section 48, the following items must be considered: (1) whether a proposed development was designed in an aesthetically pleasing manner in relation to the environmental character and limitations of its site, adjacent properties, and bordering streets; (2) whether the proposed

development's design (including height, bulk and orientation) is in harmony with the existing and intended character of its neighborhood; (3) whether the development will change the essential character of the area; and (4) whether the development would be akin to a large commercial signage and/or pylon that can be detrimental to the skyline.

I find that Section 48 appears relevant especially considering petitioner KOR's allegations that the Torre de Manila sticks out "like a sore thumb"[108] and respondent NHCP's statement to the Senate that the Commission does find that the condominium structure (Torre de Manila) "look[s] ugly,"[109] and "visually obstructs the vista and adds an unattractive sight to what was once a lovely public image x x x."[110] The foregoing allegations should likewise be sufficiently addressed by the City of Manila upon due consideration of the standards stated under Section 48.

Finally, Ordinance No. 8119, *by its terms*, contains specific operable norms and standards that protect "views" with "high scenic quality," **separately and independently** of the historical preservation, conservation, and aesthetic standards discussed under Sections 47 and 48. Sections 45 and 53 obligate the City of Manila to protect views of "high scenic quality" which are the objects of "public enjoyment," under explicit "environmental conservation and protection standards:"

Sec. 45. Environmental Conservation and Protection Standards. – It is the intent of the City to protect its **natural resources**. In order to achieve this objective, all *development* shall comply with the following *regulations*:

1. **Views** shall be preserved for public enjoyment especially in sites with **high scenic quality** by closely considering building **orientation, height, bulk**, fencing and **landscaping**.

x x x x x x x x x

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[108] *Rollo*, p.13.

[109] *Id.* at 172.

[110] *Id.*

Sec. 53. Environmental Compliance Certificate (ECC). – Notwithstanding the issuance of zoning permit (locational clearance) Section 63 of this Ordinance, no **environmentally critical projects** nor projects located in **environmentally critical areas** shall be commenced, developed or operated unless the requirements of ECC have been complied with. (Emphasis and italics supplied.)

I note that the Torre de Manila is in a University Cluster Zone (INS-U), which is assigned a permissible maximum Percentage Land Occupancy (PLO) of 0.6 and a maximum Floor-Area Ratio (FAR) of 4. Applying these Land Use Intensity Controls (LUICs), petitioner KOR claims that the City of Manila violated the zoning restrictions of Ordinance No. 8119 when it: (1) permitted respondent DMCI-PDI to build a structure beyond the seven-floor limit allowed within an "institutional university cluster;" and (2) granted respondent DMCI-PDI a variance to construct a building "almost six times the height limit."[111] Petitioner KOR asserts that even at 22.83% completion, or at a height of 19 floors as of August 20, 2014, the Torre de Manila already obstructs the "view" of the "background of blue sky" and the "vista" behind the Rizal Park and the Rizal Monument.[112]

I am aware that KOR does not in its petition invoke the constitutional right of the people to a balanced and healthful ecology,[113] other environmental protection statutes, or Sections 45 and 53 of Ordinance No. 8119. Considering, however, the language of the petition's allegations, the texts of Sections 45 and 53, and the greater public interest in the just and complete determination of all issues relevant to the disposition of this case, I include the following consideration of Sections 45 and 53 in my analysis.

In my view, Section 45 in relation to Section 53, *by their terms*, provide standards by which "views" with "high scenic

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[111] *Rollo*, p. 22.

[112] *Id.* at 23.

[113] CONSTITUTION, Art. II, Sec. 16.

quality" enjoyed by the public should be preserved, *i.e.*, "all developments shall comply with x x x regulations" including those relating to "building orientation, height, [and] bulk x x x."

To me, these Sections thus present the following questions for the City of Manila to consider and decide: (1) whether the Rizal Park and the Rizal Monument generate a view of high scenic quality that is enjoyed by the public;[114] (2) whether this view comes within the purview of the term "natural resources;" (3) whether the orientation, height, and bulk of the Torre de Manila, as prescribed in its LUIC rating under the University Cluster Zone, or as approved by the variance granted by the City of Manila, will impair the protection of this view; and (4) whether the Torre de Manila is an environmentally critical project or is a project located in an environmentally critical area, as to require compliance with the requirements of an ECC.[115]

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[114] The Rizal Park is described by the National Parks Development Committee, the entity tasked with Rizal Park's maintenance and development, as "the Philippine's premier open space, the green center of its historical capital" and the "central green of the country." NATIONAL PARKS DEVELOPMENT COMMITTEE, PARKS FOR A NATION 11 (2013).

[115] The record shows that an Environmental Compliance Certificate was issued by the DENR to the City of Manila. (*Rollo*, p. 385) However, the record does not contain the Environmental Impact Statement (EIS) on which the ECC was based, and whether the EIS considered the impact of the Torre de Manila on the Rizal Park land and the Rizal Monument, under the terms of Sections 45 and 53. It is well to remember that it was the concern of the Environmental Management Bureau-National Capital Region, over the impact of the Torre de Manila on the setting of the Rizal Park and the Rizal Monument that triggered the first contact of DMCI-PDI with NHCP. The ECC refers to an Initial Environmental Examination (IEE) Checklist which was submitted and intended to protect and mitigate the Torre de Manila's adverse impacts on the environment. The IEE Checklist Report, which the DENR uses for projects to be located within Environmentally Critical Areas (ECA), is not itself part of the record. The IEE Checklist Report form requires the DENR to consider, under Environmental Impacts and Management Plan, "possible environmental/social impacts" in the form of "impairment of visual aesthetics." The record is bereft of information on how this possible impact to the visual aesthetics of the Rizal Park and the Rizal Monument was considered or handled.

C.

The majority states that the main purpose of zoning is the protection of public safety, health, convenience, and welfare. It is argued that there is no indication that the Torre de Manila project brings any harm, danger or hazard to the people in the surrounding areas except that the building allegedly poses an unsightly view on the taking of photos or the visual appreciation of the Rizal Monument by locals and tourists.

I disagree.

The modern view is that health and public safety do not exhaust or limit the police power purposes of zoning. It is true that the concept of police power (in general) and zoning (in particular) traditionally developed alongside the regulation of nuisance and dangers to public health or safety. The law on land development and control, however, has since dramatically broadened the reach of the police power in relation to zoning.

The protection of cultural, historical, aesthetic, and architectural assets as an aspect of the public welfare that a State is empowered to protect *pursuant to the police power* would find its strongest support in *Berman v. Parker*.[116] This 1954 landmark case broke new and important ground when it recognized that public safety, health, morality, peace and quiet, law and order — which are some of the more conspicuous examples of the traditional application of the police power — merely illustrate the scope of the power and do not limit it.[117] Justice William O. Douglas in his opinion famously said:

> We deal, in other words, with what traditionally has been known as the police power. An attempt to define its reach or trace its outer limits is fruitless, for each case must turn on its own facts. The definition is essentially the product of legislative determinations addressed to the purposes of government, purposes neither abstractly nor historically

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[116] *Supra* note 2. See Terence H. Benbow & Eugene G. McGuire, *Zoning and Police Power Measures for Historic Preservation: Properties of Nonprofit and Public Benefit Corporations*, 1 PACE L. REV. 635 (1981).

[117] *Berman v. Parker, supra* note 2, at 32-33.

capable of complete definition. Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well nigh conclusive. x x x

The concept of public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.[118] (Emphasis supplied. Citations omitted.)

Building on *Berman* and later statutes, courts would, over time, accept newer definitions of the public welfare in support of expansive zoning laws. Some of the most significant applications of this expansion will occur in the use of zoning to effect public welfare interests in historical preservation, protection of the environment and ecology, and aesthetics.[119]

At this juncture, I would like to put into historical perspective the development of, and inter-relation between, town planning, police power and zoning.

a.

Town planning, at least in the United States, traces its origins from early colonial days. Civil engineers and land surveyors dominated the design of frontier settlements.[120] The advent of widespread land speculation then triggered the era of city-building. When unplanned growth led to disease, poor sanitation, and problems of drainage and disposal of waste, the "water-carriage sewerage system" was invented, paving the way for what we now know as the era of the Sanitary Reform Movement.[121]

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[118] *Id.*

[119] HAGMAN & JUERGENSMEYER, *supra* note 92, at 378-388, 446-472.

[120] *Id.* at 13-14.

[121] *Id.* at 14-16.

After the Civil War, American cities rapidly grew, leading to "an increased awareness of the need for civic beauty and amenities in America's unplanned urban areas."[122] With the growing agitation for "greater attention to aesthetics in city planning" came the City Beautiful Movement, whose debut is commonly attributed to the Chicago World Fair of 1893.[123] This Movement is considered the precursor to modem urban planning whose hallmarks include "[w]ell-kept streets, beautiful parks, attractive private residences, fresh air and sanitary improvements."[124] In the 1890s, townspeople formed *ad hoc* "village improvement associations" to propagate the movement.[125] Over time, the village improvement associations would give way to planning commissions. Much later, local governments adopted city plans which they eventually incorporated into comprehensive zoning ordinances.[126] Thereafter, the United States Supreme Court in 1926 would uphold the constitutionality of a general zoning ordinance in *Village of Euclid.*

b.

Historic preservation and conservation has a long history. It is said to have started in the United States in the mid 1800's, with efforts to save Mt. Vernon, the home of George Washington. Before the Civil War, the United States (US) Congress initially harbored "strong doubts" as to the constitutional basis of federal involvement in historic preservation.[127] Since the government at the time was not financing the acquisition of historic

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[122] *Id.* at 16.

[123] *Id.*

[124] *Id.* at 17.

[125] *Id.*

[126] *Id.* at 18-24.

[127] Richard West Sellars, *Pilgrim Places: Civil War Battlefields, Historic Preservation, and America's First National Military Parks, 1863-1900*, 2 CRM: THE JOURNAL OF HERITAGE STEWARDSHIP 45-47 (2005) [hereinafter "SELLARS"].

property,[128] a group of ladies organized a private effort to acquire the property and save it from ruin.[129] The US Congress injected itself into the preservation field only when it began purchasing Civil War battlefield sites. Sometime in 1893, the US Congress passed a law which provided for, among others, the acquisition of land to preserve the lines of the historic Battle of Gettysburg. This law was challenged on constitutional grounds and gave rise to the landmark decision in *United States v. Gettysburg Elec. Ry. Co.*[130]

Gettysburg Electric Railway Co., a railroad company which acquired property for its railroad tracks that later became subject of condemnation, filed a case questioning the kind of public use for which its land is being condemned. In unanimously ruling in favor of the federal government, the United States Supreme Court held that the taking of the property "in the name and for the benefit of all the citizens of the country x x x seems x x x not only a public use, but one so closely connected with the welfare of the republic itself x x x"[131] With this Decision,

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[128] HAGMAN & JUERGENSMEYER, *supra* note 92, at 461.

[129] Seth Porges, *The Surprising Story of How Mount Vernon Was Saved From Ruin*, FORBES, January 14, 2016, <http://ift.tt/1SkfcVp> (last accessed April 5, 2017).

[130] 160 U.S. 668 (1896).

[131] *Id.* at 682. The US Supreme Court held:

> Upon the question whether the proposed use of this land is public one, we think there can be no well founded doubt. And also, in our judgment, the government has the constitutional power to condemn the land for the proposed use. x x x
>
> The end to be attained by this proposed use, as provided for by the act of Congress, is legitimate, and lies within the scope of the Constitution. **The battle of Gettysburg was one of the great battles of the world. x x x Can it be that the government is without power to preserve the land** and properly mark out the various sites upon which this struggle took place? Can it not erect the monuments provided for by these acts of Congress, **or even take possession of the field of battle in the name and for the benefit of all the citizens of the country for the present and for the future? Such a use seems necessarily not only a public use, but one so closely connected with the welfare of the republic itself as to be within the**

historic preservation law was "canonized by the legislative, executive, and judicial branches of the Federal Government"[132] and given "a constitutional foundation."[133]

On the other hand, environmental aspects of land use control were scarcely a concern before the 1960s.[134] This, however, would change in 1969 with the passage of the federal National Environmental Policy Act[135] (NEPA) which mandated that federal agencies consider the environmental effects of their actions. The policy goals as specified in the NEPA include "responsibilities of each generation as trustee of the environment for succeeding generations"[136] and to "assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings"[137] through the preparation of environmental impact statements on major federal actions which may have a significant impact on the environment, natural or built.[138]

The NEPA later led to the adoption of similar laws in over 75 countries.[139] In the Philippines, President Marcos in 1977 issued Presidential Decree No. 1151, entitled "Philippine Environmental Policy," declaring it the responsibility of the government to, among others, "preserve important historic and cultural aspects

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powers granted Congress by the Constitution for the purpose of protecting and preserving the whole country. x x x (*Id.* at 680-682. Emphasis supplied.)

[132] SELLARS, *supra* at 46-47.

[133] *J.* Peter Byrne, *Hallowed Ground: The Gettysburg Battlefied in Historic Preservation Law*, GEORGETOWN LAW FACULTY WORKING PAPERS, Paper 91 (2008), <http://scholarship.law.georgetown.edu/fwps_papers/91> (last accessed July 25, 2016). See also SELLARS, *supra*.

[134] HAGMAN & JUERGENSMEYER, *supra* note 92, at 378.

[135] Pub. L. No. 91-190, 83 Stat. 852, codified at 42 U.S.C §§4321-4361.

[136] 42 USC §4331.

[137] *Id.*

[138] HAGMAN & JUERGENSMEYER, *supra* note 92, at 382.

[139] Larry W. Canter, *ENVIRONMENTAL IMPACT ASSESSMENT* 35 (1996).

of the Philippine heritage." It declared that an impact statement shall be filed in every action, project, or undertaking that significantly affects the quality of the environment. Presidential Decree No. 1586,[140] issued in 1978, then authorized the President to declare certain projects, undertaking, or areas in the country as "environmentally critical." Pursuant to this authority, President Marcos, under Proclamation No. 1586, declared areas of unique historic, archaeological, or scientific interests as among the areas declared to be environmentally critical and within the scope of the Environmental Impact Statement System.[141]

The broadening concept of the public welfare would also extend to considerations of aesthetics. The traditional rule has been that the authority for statutes and ordinances is the state's police power to promote the public safety, health, morals, or general welfare.[142] Aesthetic considerations as a "primary motivation" to the enactment of ordinances are "insufficient" where they are only "auxiliary or incidental" to the interests in health, morals and safety.[143]

In early court decisions concerning aesthetic regulation, the US Supreme Court viewed aesthetics as "not sufficiently

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[140] Establishing an Environmental Impact Statement System Including Other Environmental Management Related Measures and for Other Purposes.

[141] See HAGMAN & JUERGENSMEYER, *supra* note 92, at 385-386:

> Alternatives are at the heart of the EIS [requirement]. All reasonable alternatives are to be described and analyzed for their environmental impacts. Alternatives include abandonment of the project and delay for further study. Even those alternatives which are not within the preparing agency's powers are to be discussed. x x x
>
> Properly utilized, the EIS process achieves two goals. First, it forces agencies to consider the environmental effect of their decisions. Second, it provides a disclosure statement showing both the environmental consequences of the proposed action and the agency's decision-making process.

[142] *Aesthetic Purposes in the Use of the Police Power*, 9 DUKE L.J. 299, 303 (1960).

[143] Robert J. DiCello, *Aesthetics and the Police Power*, 18 CLEV. MARSHALL L. REV. 384, 387 (1969) [hereinafter "DICELLO"].

important in comparison with traditional police power uses."[144] At that time, the US Supreme Court would hold that aesthetic values were not important enough to warrant an infringement of more highly valued property rights.[145] Aesthetic regulations were perceived to carry "great a danger of unbridled subjectivity, unlike other areas of state regulation, where objective evaluation of the governmental purpose is possible."[146] The lack of any objective standard to determine what is aesthetically pleasing created a real danger that the state will end up imposing its values upon the society which may or may not agree with it.

As earlier noted, this would change in 1954 with *Berman*. Courts would thereafter take a more liberal and hospitable view towards aesthetics.[147] "The modern trend of judicial decision x x x is to sanction aesthetic considerations as the sole justification for legislative regulation x x x."[148] Writers and scholars would articulate the bases for extending to aesthetic stand-alone acceptance as a public welfare consideration. Newton D. Baker, a noted authority in zoning regulations, argued that beauty is a valuable property right.[149] Professor Paul Sayre argued that since "aesthetics maintains property values," the greater the aesthetic value of property the more it is worth, therefore it will generate more taxes to fund public needs "thereby making aesthetics a community need worthy of the protection of the police power."[150] DiCello would make the formulation thus:

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[144] James Charles Smith, *Law, Beauty, and Human Stability: A Rose Is a Rose Is a Rose*, 78 CAL. L. REV. 787, 788 (1990) [hereinafter "SMITH"] *reviewing* John Costonis, *ICONS AND ALIENS: LAW, AESTHETICS, AND ENVIRONMENTAL CHANGE* (1989).

[145] *Id.* at 788-789.

[146] *Id.* at 789.

[147] *Id.* at 790-791.

[148] *Aesthetic Purposes in the Use of the Police Power*, 1960 DUKE L.J. 299, 301.

[149] DICELLO, *supra* at 380-390.

[150] *Id.* at 390 citing Paul Sayre, *Aesthetics and Property Values: Does Zoning Promote the Public Welfare?*, 35 A.B.A. J. 471 (1949).

"consequently, the general welfare may be defined as the health, safety and morals or aesthetics of the public."[151] Costonis[152] proposed that the legal justification for aesthetic laws is not beauty but rather our individual and group psychological well-being.[153] Bobrowski argued that visual resource protection supports tourism which has undeniable economic benefits to the society; the protection of the visual resource is related to the preservation of property values.[154] "Scenic quality is an important consideration for prospective purchasers. Obstruction of views, and noxious or unaesthetic uses of land plainly decrease market value."[155] Coletta explained that "an individual's aesthetic response to the visual environment is founded on the cognitive and emotional meanings that the visual patterns convey."[156]

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[151] *Id.*

[152] *See* John Costonis, *ICONS AND ALIENS: LAW, AESTHETICS, AND ENVIRONMENTAL CHANGE* (1989).

[153] *See* SMITH, *supra* at 793.

[154] *See* Mark Bobrowski, *Scenic Landscape Protection Under the Police Power*, 22 B.C. ENVTL. AFF. L. REV. 697 (1995).

[155] *Id.*

[156] *See also* J.J. Dukeminier, Jr., *Zoning For Aesthetic Objectives: a Reappraisal*, 20 LAW & CONTEMPORARY PROBLEMS 218 (1955), which confronts squarely the problem raised by the subjective quality of the central element of aesthetics: what is beauty?:

> Now it seems fairly clear that among the basic values of our communities, and of any society aboriginal or civilized, is beauty. Men are continuously engaged in its creation, pursuit, and possession; beauty, like wealth, is an object of strong human desire. Men may use a beautiful object which they possess or control as a basis for increasing their power or wealth or for effecting a desired distribution of any one or all of the other basic values of the community, and, conversely, men may use power and wealth in an attempt to produce a beautiful object or a use of land which is aesthetically satisfying. It is solely because of man's irrepressible aesthetic demands, for instance, that land with a view has always been more valuable for residential purposes than land without, even though a house with a view intruding everywhere is said to be terribly hard to live in. Zoning regulations may, and often do, integrate aesthetics with a number of other community objectives, but it needs to be repeatedly emphasized that a healthful, safe and efficient

c.

In the Philippines, this Court, in the 1915 seminal case of *Churchill v. Rafferty*,[157] declared that objects which are offensive to the sight fall within the category of things which interfere with the public safety, welfare, and comfort, and therefore, within the reach of the State's police power. Thus:

> Without entering into the realm of psychology, we think it quite demonstrable that sight is as valuable to a human being as any of his other senses, and that the proper ministration to this sense conduces as much to his contentment as the care bestowed upon the senses of hearing or smell, and probably as much as both together. x x x Man's [a]esthetic feelings are constantly being appealed to through his sense of sight. x x x[158]

Forty years later, in *People v. Fajardo*,[159] we would hold that "the State may not, under the guise of police power, permanently

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community environment is not enough. More thought must be given to appearances if communities are to be really desirable places in which to live. Edmund Burke-no wild-eyed radical-said many years ago, "To make us love our country, our country ought to be lovely." It is still so today.

x x x x x x x x x

Furthermore, in specifying and evaluating indices of attractive environments, it is important that community decision-makers – judges and planning officials – realize that they must promote land use which in time will succeed in appealing to people in general. In public planning that environment is beautiful which deeply satisfies the public; practical success is of the greatest significance. In the long run, what the people like and acclaim *as* beautiful provides the operational indices of what is beautiful so far as the community is concerned. All popular preferences will never be acceptable to connoisseurs who urge their own competence to prescribe what is *truly* beautiful, yet it seems inescapable that an individual's judgment of beauty cannot be normative for the community until it is backed with the force of community opinion. History may be of some comfort to the connoisseurs: widely acknowledged *great* artists and *beautiful* architectural styles produced popular movements and not cults. A great age of architecture has not existed without the popular acceptance of a basic norm of design. (Emphasis in the original.

[157] 32 Phil. 580 (1915).

[158] *Id.* at 608.

[159] 104 Phil. 443 (1958).

divest owners of the beneficial use of their property and practically confiscate them **solely** to preserve or assure the aesthetic appearance of the community."[160] In that case, we invalidated an ordinance that empowered the Municipal Mayor to refuse to grant a building permit to a proposed building that "destroys the view of the public plaza." In the more recent case of *Fernando v. St. Scholastica's College*,[161] this Court struck down a Marikina City ordinance which provided, among others, a six-meter setback requirement for beautification purposes. There, we held: "the State may not, under the guise of police power, permanently divest owners of the beneficial use of their property solely to preserve or enhance the aesthetic appearance of the community."[162]

Of course, *Churchill* and *Fajardo* were decided under the 1935 Constitution which simply provided that arts and letters shall be under the State's patronage.[163] The 1973 and 1987 Constitutions would change this. The 1973 Constitution provided that "Filipino culture shall be preserved and developed for national identity."[164] Then, in 1987, the Constitution devoted a whole new sub-section to arts and culture, including Sections 15 and 16 of Article XIV, which are subjects of this case. More than that, it provided for a right of the people to a balanced and healthy ecology, which spawned *Oposa v. Factoran, Jr.*[165]

As also previously noted, Congress in 1991 enacted the Local Government Code which specifically defined as concerns of the public welfare, the preservation and enrichment of culture and enhancing the rights of the people to a balanced ecology.

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[160] *Id.* at 447-448.

[161] G.R. No. 161107, March 12, 2013, 693 SCRA 141.

[162] *Id.* at 160.

[163] 1935 CONSTITUTION, Art. XIII, Sec. 4.

[164] 1973 CONSTITUTION, Article XV, Sec. 9(2).

[165] *Supra* note 36.

Then in 2006, the City of Manila enacted Ordinance No. 8119, which amended Ordinance No. 81-01[166] of the Metropolitan Manila Commission. A "City Beautiful Movement," appears as one of the five-item "Plan Hi-Lights" of Ordinance No. 8119 and includes, among others, "city imageability."[167] I quote:

> This promotes the visual "imageability" of the City according to the Burnham Plan of 1905. As per plan recommendation from Daniel Burnham, it gives emphasis on the creation and enhancement of wide boulevards, public buildings, landscaped parks and **pleasant vistas**. It also encourages the connectivity of spaces and places through various systems/networks (transport/parkways). But **most of all, it is the establishment of a symbolic focus that would identify the City of Manila as well as become its unifying element**. These are the main themes for Place Making revolving around creating a "sense of place" and distinction within the City. (Emphasis and underscoring supplied.)

I have compared the provisions of Ordinance No. 8119 with those of Ordinance No. 81-01 and find that they are both general zoning ordinances. Both similarly divide the City of Manila into zones, prescribe height, bulk and orientation standards applicable to the zones, and provide for a procedure for variance in case of non-conforming uses. They, however, differ in one very significant respect relevant to the determination of this case. **Ordinance No. 8119 provides for three completely new standards not found in Ordinance No. 81-01, or for that matter, in any of the other current zoning ordinances of major cities within Metro Manila, such as Marikina,**[168] **Makati,**[169] **or Quezon City.**[170] These, as discussed,

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[166] Comprehensive Zoning Ordinance for the National Capital Region (1981).

[167] II MANILA COMPREHENSIVE LAND USE PLAN AND ZONING ORDINANCE 2005-2020, Sec. 3. "Imageability" was defined as "that quality in a physical object which gives it a high probability of evoking a strong image in any given observer."

[168] Ordinance No. 161 (2006).

[169] Ordinance No. 2012-102.

[170] Ordinance No. SP-2200, S-2013.

are: (a) the historical preservation and conservation standards under Section 47; (b) the environmental conservation and protection standards under Sections 45 and 53; and (c) the aesthetic/site performance standards under Section 48. **To my mind, these sets of distinctive provisions introduced into Ordinance No. 8119 constitute indubitable and irrefutable proof that the City of Manila has aligned itself with jurisdictions that have embraced the modern view of an expanded concept of the public welfare.** For this reason, I cannot accept the majority's view that zoning as an aspect of police power covers only "traditional" concerns of public safety, health, convenience, and welfare.

I am also of the view that *mandamus* lies against respondents.

Generally, the writ of *mandamus* is not available to control discretion nor compel the exercise of discretion.[171] The duty is ministerial only when its discharge requires neither the exercise of official discretion nor judgment.[172] Indeed, the issuance of permits *per se* is not a ministerial duty on the part of the City. This act involves the exercise of judgment and discretion by the CPDO who must determine whether a project should be approved in light of many considerations, not excluding its possible impact on any protected cultural property, based on the documents to be submitted before it.

Performance of a duty which involves the exercise of discretion may, however, be compelled by *mandamus* in cases where there is grave abuse of discretion, manifest injustice, or palpable excess of authority.[173] In *De Castro v.*

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[171] *Metropolitan Bank and Trust Company v. Reynado*, G.R. No. 164538, August 9, 2010, 627 SCRA 88, 106.

[172] *Civil Service Commission v. Department of Budget and Management*, G.R. No. 158791, July 22, 2005, 464 SCRA 115, 133-134.

[173] See *M.A. Jimenez Enterprises, Inc. v. Ombudsman*, G.R. No. 155307, June 6, 2011, 650 SCRA 381, 399; *Corpuz v. Sandiganbayan*, G.R. No. 162214, November 11, 2004, 442 SCRA 294, 308; *Civil Service Commission v. Department of Budget and Management, supra*. See also *Licaros v. Sandiganbayan*, G.R. No. 145851, November 22, 2001, 370 SCRA 394,

Salas,[174] a writ of *mandamus* was issued against a lower court which refused to go into the merits on an action "upon an **erroneous view of the law or practice**."[175] There, it was held:

No rule of law is better established than the one that provides that mandamus will not issue to control the discretion of an officer or a court, when honestly exercised and when such power and authority is not abused. A distinction however must be made between a case where the writ of mandamus is sought to control the decision of a court upon the merits of the cause, and cases where the court has refused to go into the merits of the action, upon an erroneous view of the law or practice. If the court has erroneously dismissed an action upon a preliminary objection and upon an erroneous construction of the law, then *mandamus* is the proper remedy to compel it to reinstate the action and to proceed to hear it upon its merits.[176]

In *Association of Beverage Employees v. Figueras*,[177] the Court *en banc* explained:

That mandamus is available may be seen from the following summary in 38 C. J. 598-600, of American decisions on the subject, including a U. S. Supreme Court decision:

> While the contrary view has been upheld, the great weight of authority is to the effect that an exception to the general rule that discretionary acts will not be reviewed or controlled exists when the discretion has been abused. **The discretion must be exercised under the established rules of law, and it may be said to be abused within the foregoing rule where the action complained of has been arbitrary or capricious, or based on personal, selfish, or fraudulent motives, or on false information, or on a total lack of authority to act, or where it amounts to an evasion of a positive duty, or there has**

411; *Angchangco, Jr. v. Ombudsman*, G.R. No. 122728, February 13, 1997, 268 SCRA 301, 306; *Antiquera v. Baluyot*, 91 Phil. 213, 220 (1952).

[174] 34 Phil. 818 (1916).

[175] *Id.* at 823-824. See also *Eraña v. Vera*, 74 Phil. 272 (1943).

[176] *De Castro v. Salas, supra* at 823-824.

[177] 91 Phil. 450 (1952).

> **been a refusal to consider pertinent evidence, hear the parties when so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which if adopted would be effective. If by reason of a mistaken view of the law or otherwise there has been in fact no actual and *bona fide* exercise of judgment and discretion,** as, for instance, where the discretion is made to turn upon matters which under the law should not be considered, or where the action is based upon reasons outside the discretion imposed, **mandamus will lie**. So where the discretion is as to the existence of the facts entitling the relator to the thing demanded, if the facts are admitted or clearly proved, mandamus will issue to compel action according to law. x x x[178] (Emphasis and underscoring supplied.)

I find that the aforementioned provisions of Ordinance No. 8119 set out clear duties on the part of public respondent City of Manila for purposes of resolving whether the Torre de Manila construction project should be allowed and that the City, by reason of a mistaken or erroneous construction of its own Ordinance, had failed to consider its duties under this law when it issued permits in DMCI-PDI's favor.[179] Thus, while a writ of *mandamus* generally only issues to compel the performance of a ministerial duty, where, as in this case, there is a neglect or failure on the part of the City to consider the standards and requirements set forth under the law and its own comprehensive land use plan and zoning ordinance, *mandamus* may lie to compel it to consider the same for purposes of the exercise of the City's discretionary power to issue permits.

I have earlier shown that Ordinance No. 8119 contains three provisions which, *by their terms*, must be considered in relation

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[178] *Id.* at 455. See also *Rene de Knecht v. Desierto*, G.R. No. 121916, June 28, 1998, 291 SCRA 292 and *Eraña v. Vera, supra* (where the Court held that a mistaken or erroneous construction of the law may be a ground for the issuance of a writ of *mandamus*).

[179] Ordinance No. 8119, Sec. 47.

to the determination by the City of Manila of the issue of whether the Torre de Manila condominium project should be allowed to stand as is. Article VII (Performance Standards) of Ordinance No. 8119 provides the standards under which "[a]ll land uses, developments or constructions *shall* conform to x x x." The Ordinance itself provides that in the construction or interpretation of its provisions, "the term 'shall' is always mandatory."[180] These standards, placed in the Ordinance for specific, if not already expressed, reasons must be seriously considered for purposes of issuance of building permits by the City of Manila.

Sections 43 in relation to 53, and 47 and 48, however, were not considered by the City of Manila when it decided to grant the different permits applied for by DMCI-PDI. The City has, in fact, adamantly maintained that there is no law which regulates, much less prohibits, such construction projects.[181] While I hesitate to find grave abuse of discretion on the part of the City of Manila in its actuations relating to its issuance of the permits and the variance, this is due to the disputed facts respecting these issues. There is, for example, a serious allegation of non-compliance with FAR and variance requirements under the Ordinance; this issue was, in fact, discussed and debated at great length during oral arguments.[182] While I believe that the Court should refrain from making a determination of this particular issue, involving as it does findings of fact and technical matters, I do not hesitate to find that the City was **mistaken in its view** that there was no law which regulates development projects in relation to views, vista points, landscape, and settings of certain properties.

This law, as I have earlier sought to demonstrate, is Ordinance No. 8119, whose purposes include the protection of the "character" of areas within the locality and the promotion of

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[180] Ordinance No. 8119, Sec. 6(f).

[181] *Rollo*, p. 434.

[182] See interpellations by Justices Diosdado Peralta and Francis Jardeleza, among others. TSN, August 11, 2015, pp. 6-7,20-36,48-52, 65-67; TSN, August 18, 2015, pp. 26-onwards.

the general welfare of its inhabitants.[183] The standards and requirements under Ordinance No. 8119 were included in the law to ensure that any proposed development to be approved be mindful of the numerous public welfare considerations involved. **Ordinance No. 8119 being the primary and dominant basis for all uses of land resources within the locality, the City of Manila, through the CPDO, knows or ought to know the existence of these standards and ought to have considered the same in relation to the application of DMCI-PDI to construct the Torre de Manila project.**

Worse, the City has apparently been "suspending" the application of several provisions of the Ordinance purportedly to follow the more desirable standards under the National Building Code. In a letter dated October 10, 2012, the Manila CPDO wrote DMCI-PDI stating that while Torre de Manila exceeded the FAR allowed under the Manila Zoning Ordinance, it granted DMCI-PDI a zoning permit "because the FAR restriction was **suspended** by the executive branch, for the City Planning Office opted to follow the National Building Code."[184] Neither does it appear that compliance was made pursuant to the requirements of Section 47(b) of Ordinance No. 8119 on the submission of a heritage impact statement (*i.e.*, that the project will not adversely impact the heritage significance of the cultural property) for review by the CPDO in coordination with the NHCP.

Ordinance No. 8119's inclusion of standards respecting historic preservation, environmental protection, and aesthetics puts the City of Manila at the forefront of local governments that have embraced the expanded application of the public welfare. It is thus a major source of bafflement for me as to how the City of Manila could have missed these distinctive features of Ordinance No. 8119 when it processed DMCI-PDI's applications, up to and including its grant of the variance. The City of Manila's selective attitude towards

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[183] Ordinance No. 8119, Sec. 3.

[184] *Rollo*, p. 302. (Emphasis supplied.)

the application of its *own* rules reminds of Justice Brion's statement in *Jardeleza v. Sereno*:[185]

> The JBC, however, has formulated its own rules, which even commanded that a higher standard for procedural process be applied to Jardeleza. But even so, by opting to selectively apply its own rules to the prejudice of Jardeleza, the JBC not only violated the precepts of procedural due process; it also violated the very rules it has set for itself and thus violated its own standards.
>
> **This kind of violation is far worse than the violation of an independently and externally imposed rule, and cannot but be the violation contemplated by the term grave abuse of discretion. The JBC cannot be allowed to create a rule and at the same time and without justifiable reason, choose when and to whom it shall apply, particularly when the application of these rules affects third persons who have relied on it.**[186] (Emphasis and underscoring supplied.)

The City of Manila may have been of the honest belief that there was no law which requires it to regulate developments within the locality following the standards under Sections 45, 47, and 48. Still, the Court, without offending its bounden duty to interpret the law and administer justice, should not permit a disregard of an Ordinance by diminishing the duty imposed by Congress, through the local legislature, to effectuate the general welfare of the citizens of the City of Manila. The protection of general welfare for all citizens through the protection of culture, health and safety, among others, is "an ambitious goal but over time, x x x something that is attainable."[187] To me, such mandate is as much addressed to this Court, as it is to the other branches of Government. For this reason, I hesitate for the Court to allow the resulting effective disregard of the Ordinance (on the guise of technicalities) and be ourselves a stumbling block to the realization of such a laudable state goal.

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[185] G.R. No. 213181, August 19, 2014, 733 SCRA 279.

[186] *Id.* at 427 (Brion, *J.*, *concurring*).

[187] Aquilino Pimentel, Jr., *THE LOCAL GOVERNMENT CODE REVISITED* 70 (2011).

Under Section 75 of Ordinance No. 8119, responsibility for the administration and enforcement of the same shall be with the City Mayor, through the CPDO.[188] For as long as it has not been repealed by the local *sanggunian* or annulled by the courts, Ordinance No. 8119 must be enforced.[189] The City of Manila cannot simply, and without due justification, disregard its obligations under the law and its own zoning ordinance. Officers of the government from the highest to the lowest are creatures of the law and are bound to obey it.[190] In this *specific* sense, enforcement of the ordinance has been held to be a public duty,[191] not only ministerial,[192] the performance of which is enforceable by a writ of *mandamus*.

I hasten to clarify that, by so doing, the Court would **not** be directing the City of Manila to exercise its discretion in one way or another. That is not the province of a writ of *mandamus*.[193] Lest I be misconstrued, I propose that the writ of *mandamus* issued in this case merely compel the City of Manila, through the CPDO, to *consider* the standards set out under Ordinance No. 8119 in relation to the applications of DMCI-PDI for its Torre de Manila project. It may well be that

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[188] Ordinance No. 8119, Sec. 75. Responsibility for Administration and Enforcement. - This Ordinance shall be enforced and administered by the City Mayor through the City Planning and Development Office (CPDO) in accordance with existing laws, rules and regulations. For effective and efficient implementation of this Ordinance, the CPDO is hereby authorized to reorganize its structure to address the additional mandates provided for in this Ordinance.

[189] *Social Justice Society v. Atienza*, G.R. No. 156052, March 7, 2007, 517 SCRA 657, 665-666.

[190] *Id.* at 666 citing *Dimaporo v. Mitra, Jr.*, G.R. No. 96859, October 15, 1991, 202 SCRA 779, 795.

[191] *Miguel v. Zulueta*, G.R. No. L-19869, April 30, 1966, 16 SCRA 860, 863.

[192] See *Social Justice Society v. Atienza Jr., supra* at 665-666.

[193] *Angchangco, Jr. v. Ombudsman*, G.R. No. 122728, February 13, 1997, 268 SCRA 301, 306 citing *Kant Kwong v. Presidential Commission on Good Government*, G.R. No. 79484, December 7, 1987, 156 SCRA 222, 232-233.

the City of Manila, *after exercising its discretion*, finds that the Torre de Manila meets any or all of the standards under the Ordinance. The Court will not presume to preempt the action of the City of Manila, through the CPDO, when it re-evaluates DMCI-PDI's application with particular consideration to the guidelines provided under the standards.

The majority makes much of the grant of a variance in respondent DMCI-PDI's favor and views the same as *the exercise of discretion by the City of Manila* which can only be corrected where there is a showing of grave abuse of discretion. This is inaccurate on two counts.

First, the rule that *mandamus* only lies to compel the performance of a ministerial duty has several exceptions; it is not limited to a case of grave abuse of discretion. As I have tried to discuss in detail, where respondent's exercise of discretion was based on an erroneous or mistaken view of the law, *mandamus* may be the proper remedy to compel it to reinstate the action and to proceed to hear it upon its merits.[194]

Second, the majority's view fails to appreciate the province of a variance, which is, essentially an exemption, under certain specified and stringent conditions, from compliance with the corresponding land use intensity controls (LUICs) provided for a specific zone, in this case, an institutional university cluster zone.

Ordinance No. 8119 seeks to "[p]rotect the character and stability of residential, commercial, industrial, institutional, urban, open spaces and other functional areas within the locality"[195] and "[p]romote and protect public health, safety, peace, morals, comfort, convenience and general welfare of the inhabitants of the City."[196] It divided the City of Manila into 11 types of zones or districts,[197] each assigned with their

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[194] See *De Castro v. Salas, supra* note 174, at 823-824 (1916).

[195] Ordinance No. 8119, Sec. 3(2).

[196] Ordinance No. 8119, Sec. 3(3).

[197] Namely: high density residential/mixed use; medium intensity commercial/mixed use; high intensity commercial/mixed use; industrial;

corresponding LUIC ratings.[198] LUICs, in turn, specifically relate/pertain to percentages of land occupancy (PLO), floor-area ratios (FAR), and building height limits (BHL).

At this point, some discussion of the zoning concepts of orientations, height, and bulk of buildings will be helpful.

Building height limits can be regulated in several ways. One involves the prescription of maximum building heights in terms of feet or stories or both:

> Height regulations state maximum heights either in terms of feet or number of stories or both. Their general validity was accepted by *Welch v. Swasey*, and most litigation questions their validity as applied. The regulations are imposed to effectuate some of the purposes, as stated in the Standard Act, namely "to secure safety from fire," "to provide adequate light and air" and "to prevent the overcrowding of land." They also are adopted for aesthetic reasons.[199] (Citation omitted.)

Building height can also be regulated through a combination of bulk and floor limits. The PLO, for example, sets the maximum bulk of the building, or how much of the land a proposed building can occupy. The FAR, on the other hand, provides the maximum number of floors a building can have relative to its area. The zoning control devices for bulk (PLO) and floor (FAR) limits jointly determine height. These concepts are explained as follows:

> Bulk zone regulations are those which provide a zoning envelope for buildings by horizontal measurement. They include such regulations as minimum lot size, minimum frontage of lots, the area of a lot that may be covered, yard requirements and setbacks. FAR, meaning floor-area ratio, is a device that combines height and bulk provisions.

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general institutional; university cluster; general public open space; cemetery; utility; water, and overlay. (Ordinance No. 8119, Sec. 7.)

[198] The LUIC ratings are in the form of prescribed percentage of land occupancy and floor area ratio maximums.

[199] HAGMAN & JUERGENSMEYER, *supra* note 92, at 82.

Under the FAR, the ordinance designates a floor-area ratio for a particular zone. If the ratio is 1:1, for example, a one-story building can cover the entire buildable area of the lot, a two-story building can cover one-half of the buildable area, a four-story building can cover one-fourth of the buildable area and so on. In commercial office building areas in large cities the ratios may be 10:1, which would permit a twenty[-]story building on half of the buildable area of the lot.

FAR may be used in conjunction with maximum height limits and other bulk controls, so that in a 10:1 area, it may not be possible to build a 200-story building on 1/20th of the buildable area of a lot or to eliminate yards entirely and build a 10-story building up to all lot lines. Nevertheless, FAR does give the builder some flexibility. In effect[,] it provides an inducement to the builder to leave more of his lot open by permitting him to build higher.[200]

Following this, a zoning ordinance can prescribe a maximum height for buildings: (1) directly, that is, by expressly providing for height limits in terms of feet or number of stories or both; or (2) indirectly, by employing a combination of bulk and floor limits.

Ordinance No. 8119 does not provide for an express BHL.[201] Neither, for that matter, does the Building Code.[202] Instead, Ordinance No. 8119 sets up a system whereby building height is controlled by the **combined** use of a prescribed maximum FAR and a prescribed maximum PLO. Theoretically, a property owner can maximize the allowed height of his building by reducing the area of the land which the building will occupy (PLO). This process, however, can only achieve an allowed height up to a certain point as the allowable number of floors is, at the same time, limited by the FAR. Beyond the allowable maximum PLO or FAR, the property owner must avail of a mitigating device known in zoning parlance as a variance.

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[200] *Id.* at 83.

[201] Ordinance No. 8119, Sec. 27. *Height Regulations*. – Building height must conform to the height restrictions and requirements of the Air Transportation Office (ATO), as well as the requirements of the National Building Code x x x.

[202] NATIONAL BUILDING CODE, Sec. 3.01.07.

Variances are provided under zoning ordinances to meet challenges posed by so-called "nonconforming uses," a generic term covering both nonconforming buildings and nonconforming activities.[203] A nonconforming building, in the context of Ordinance No. 8119, is one that exceeds the LUIC rating, *i.e.*, PLO and FAR limits, assigned to its zone. The Ordinance allows the City of Manila to grant a variance, provided the project proponent complies with the stringent conditions and the procedure prescribed by Sections 60 to 62.[204] Section 60 provides in pertinent part:

Sec. 60. Deviations. — Variances and exceptions from the provisions of this Ordinance may be allowed by the Sangguniang Panlungsod as per recommendation from the Manila Zoning Board of Adjustment and Appeals (MZBAA) through the Committee on Housing, Urban Development and Resettlements only when all the following terms and conditions are obtained/existing:

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[203] See HAGMAN & JUERGENSMEYER, *supra* note 92, at 114-129.

[204] Sec. 61. Procedures for Granting Variances and Exceptions. – The procedure for the granting of exception and/or variance is as follows:

1. A written application for an exception for variance and exception shall be filed with the Manila Zoning Board of Adjustment and Appeals (MZBAA) through the CPDO citing the section of this Ordinance under which the same is sought and stating the ground/s thereof.

2. Upon filing of application, a visible project sign, (indicating the name and nature of the proposed project) shall be posted at the project site.

3. The CPDO shall conduct studies on the application and submit report within fifteen (15) working days to the MZBAA. The MZBAA shall then evaluate the report and make a recommendation and forward the application to the Sangguniang Panlungsod through the Committee on Housing, Urban Development and Resettlements.

4. A written affidavit of non-objection to the project/s by the owner/s of the properties adjacent to it shall be filed by the applicant with the MZBAA through the CPDO for variance and exception.

5. The Sangguniang Panlungsod shall take action upon receipt of the recommendation from MZBAA through the Committee on Housing, Urban Development and Resettlements.

Sec. 62. Approval of the City Council. – Any deviation from any section or part of the original Ordinance shall be approved by the City Council.

1. Variance - all proposed projects which do riot conformed (*sic*) with the prescribed allowable Land Use Intensity Control (LUIC) in the zone.

    a. The property is unique and different from other properties in the adjacent locality and because of its uniqueness, the owner/s cannot obtain a reasonable return on the property.

This condition shall include at least three (3) of the following provisions:

- Conforming to the provisions of the Ordinance will cause undue hardship on the part of the owner or occupant of the property due to physical conditions of the property (topography, shape, etc.), which is not self created.
- The proposed variance is the minimum deviation necessary to permit reasonable use of the property.
- The variance will not alter the physical character of the district/ zone where the property for which the variance sought is located, and will not substantially or permanently injure the use of the other properties in the same district or zone.
- That the variance will not weaken the general purpose of the Ordinance and will not adversely affect the public health, safety, and welfare.
- The variance will be in harmony with the spirit of this Ordinance.

Thus, "deviations," "variances and exceptions" from the standard LUICs of the Ordinance may be allowed by the *Sangguniang Panlungsod* as per "recommendation" from the Manila Zoning Board of Adjustment and Appeals (MZBAA) through the Committee on Housing, Urban Development and Resettlements only when specified conditions are obtained.

As earlier explained, LUICs specifically relate and pertain to PLOs, FARs, and BHLs. Variances, on the other hand, are essentially exemptions from the prescribed LUICs within a specific zone. By their terms, these standards and the considerations for the grant of a variance from the same are starkly different from the heritage, environmental, and aesthetic

factors for consideration under Section 45 in relation to Sections 53, 47, and 48.

The first set of considerations governs the determination of the question of whether a property, in the first instance, is so physically "unique" in terms of its topography and shape that a strict enforcement of the standard LUICs in the area will deprive its owner from obtaining a "reasonable return" on the property. The second set of considerations, on the other hand, pertains to the standards of heritage conservation, environmental protection, and aesthetics required from a developer as conditions to the issuance of a zoning and building permit. Compliance with one does not necessarily presuppose compliance with the other. For these reasons, I cannot accept the majority's view that the grant of a variance in this case should be treated as the City's exercise of discretion *insofar as the standards under Section 45 in relation to Section 53, and Sections 47 and 48 are concerned*.

Nevertheless, I wish to emphasize that while different, these two sets of considerations work to further general welfare concerns as seen fit by the local legislature. To my mind, these standards are inextricably intertwined and mutually reinforcing zoning concepts that operate as enforcement mechanisms of Ordinance No. 8119. Where the standards contained under these Sections represent the rule, a variance defines the exception. In the context of an actual case, such as the litigation before us, where a deviation (*i.e.*, variance) from prescribed standards is invoked, its legality as based on the facts must be established. Variances exist to mitigate the harsh application of the rule, but they were not invented to operate as ruses to render the rule inutile. The determination of how the balance is struck between law and equity will require a judicious appreciation of the attendant facts.

The record, however, is absolutely bereft of evidence supporting the City of Manila's approval of the variance. By its terms, Section 60 of Ordinance No. 8119 allows for only a single instance when a variance from the prescribed LUICs can be allowed: the property must be "unique and different

from other properties in the adjacent locality and because of its uniqueness, the owners cannot obtain a reasonable return on the property." To hurdle this, an applicant for the variance must show at least three of the express qualifications under Section 60. These qualifications, we reiterate, are as follows: (1) conforming to the provisions of the Ordinance will cause undue hardship on the part of the property owner or occupant due to physical conditions of the property (*i.e.*, topography, shape, *etc.*) which are not self-created; (2) the proposed variance is the minimum deviation necessary to permit reasonable use of the property; (3) the variance will not alter the physical character of the district/zone where the property for which the variance sought is located, and will not substantially or permanently injure the use of the other properties in the same district or zone; (4) that the variance will not weaken the general purpose of the Ordinance and will not adversely affect the public health, safety, and welfare; and (5) the variance will be in harmony with the spirit of this Ordinance.

Significantly, none of the documents submitted by DMCI-PDI show compliance with any of the foregoing qualifications. The record does not refer to any piece of evidence to show how: (1) the DMCI-PDI's property is physically "different" in topography and shape from the other properties in its zone; and (2) the DMCI-PDI cannot obtain a "reasonable return" on its property if it was compelled to comply with the prescribed LUICs in the area.

While I hesitate, at this time, to find the City of Manila's grant of the zoning and building permits and the variance to be unlawful or made in grave abuse of discretion, I do **not** endorse a finding that the City of Manila, under the facts of the case, acted in compliance with the requirements of Ordinance No. 8119. On the contrary, I would like to note a concern raised by Justice Peralta, during the oral arguments, that the grant of the permits for the Torre de Manila development *may* have violated the LUIC requirements of Ordinance No. 8119 from the very beginning. His concern is expressed in the following exchanges he had with respondent DMCI-PDI's counsel:

(a) On the allowable seven-storey building based on FAR 4 without a variance:

JUSTICE PERALTA:

Allowable storeys, so, you have gross floor area divided by building footprint or 29,900 square meter in slide number 4, over 4,485 square meters, you are only allowed to build 6.6 storeys rounded up to 7 storeys. My computation is still correct?

ATTY. LAZATIN:

On the assumption that your building footprint is 4,485, Your Honor. Meaning, your building is fat and squat.

x x x x x x x x x

JUSTICE PERALTA:

That's correct. That's why I'm saying your maximum building footprint is 4,845. So, your gross floor area of 29,000 over 4,000... 'yun na nga ang maximum, *eh*, unless you want to rewrite it down, where will you get the figure? *Yan na nga ang* maximum, *eh*. So, you got 6.6 storeys rounded up to 7 storeys. That's my own computation. I do not know if you have your own computation.

ATTY. LAZATIN:

Your Honor, that is correct but that is the maximum footprint.[205]

(b) On the resulting 49-storey building based on FAR 13, with the variance:

JUSTICE PERALTA:

So, the building permit official here knew already from the very beginning that he was constructing, that DMCI was constructing a 49-storey?

ATTY. LAZATIN:

That's correct, Your Honor.

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JUSTICE PERALTA:

It's even bigger no. So, your FAR, your FAR is 13, based on [these] documents, I'm basing this from your own

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[205] TSN, August 11, 2015, pp. 25-26.

documents, *eh*, because the zoning permit is based on the application of the builder, *eh, diba*? Am I correct, Atty. Lazatin?

ATTY. LAZATIN:
That's correct, Your Honor, except that ...

JUSTICE PERALTA:
So your FAR exceeded the prescribed FAR of 4 because your FAR is now [13.05]?[206]

ATTY. LAZATIN:
Without any variance, that is correct, Your Honor.[207]

(c) How adjusting the building footprint enables a developer, by means of a variance, to increase height of a building from FAR 4 to FAR 13:

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[206] See also following interpellation by Justice Marvic Leonen:

JUSTICE LEONEN:
x x x Okay, now, in the zoning permit if you look at the floor area, it says, "97,549 square meters," do you confirm this Counsel?

ATTY. LAZATIN:
I confirm that, Your Honor.

JUSTICE LEONEN:
And the land area is 7,475 square meters. I understand that this includes right of way?

ATTY. LAZATIN:
That's correct, Your Honor, until an additional lot was added that made the total project area to be 7,556.

JUSTICE LEONEN:
Okay. So, the floor area divided by the land area is 13.05, is that correct? You can get a calculator and compute it, it's 13.05 correct?

ATTY. LAZATIN:
That's correct, Your Honor.

JUSTICE LEONEN:
That is called the FAR?

ATTY. LAZATIN:
Yes, Your Honor. (TSN, August 11, 2015, pp. 48-49)

[207] TSN, August 15, 2015, pp. 22-24.

JUSTICE PERALTA:

I think there is no prohibition to build a 30-storey as long as you do not violate the FAR.

ATTY. LAZATIN:

That is correct, Your Honor. The height will be dependent on the so called building footprint. We can have like in the example that we gave, Your Honor, if you have a building of what they call the maximum allowable footprint, then the building that you will build is short and squat. But if you have a smaller building footprint, then you can have a thin and tall building, Your Honor.

JUSTICE PERALTA:

A higher building?

ATTY. LAZATIN:

Yes, Your Honor. That's exactly ...

JUSTICE PERALTA:

So, it's not accurate to say that just because there is a proposed 30-storey building, we will be violating this ordinance, is it right?

ATTY. LAZATIN:

That's exactly our point, Your Honor.[208]

Certainly, the variance cannot be declared legal simply because it was already issued. On the contrary, the circumstances thus far shown appear to support a view that the general presumption of regularity in the performance of official duties should **not** be applied here:

JUSTICE PERALTA:

You include that in the memorandum. It should be able to convince me that your computation is accurate and correct. Now, so, after all, from the zoning permit up to the building permit, the public officials here already knew that the DMCI was actually asking for permission to build 49-storeys although it is covered by the university cluster zone?

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[208] TSN, August 15, 2015, p. 21.

ATTY. LAZATIN:
Yes, Your Honor. All the plans submitted to all the regulatory agencies show that it was for a 49-storey building, Your Honor.

JUSTICE PERALTA:
But using the computation in the building code, I mean, in the city ordinance, it could seem that the application should not have been approved from the very beginning because it violates the zoning law of the [C]ity of Manila?

ATTY. LAZATIN:
The client DMCI was aware, Your Honor, that there have been other developers who have been able to get a variance, Your Honor.

JUSTICE PERALTA:
You know I'm not talking about the variance ....

ATTY. LAZATIN:
That's why there are so many buildings in Manila, Your Honor, that are almost 50-storeys high, Your Honor.

JUSTICE PERALTA:
I will go into that. I will go into the variance later. My only concern is this, presumption of regularity in the performance of duty is not conclusive, you understand that, right? Presumption of regularity in the performance of duty is not conclusive, that is always disputable.

ATTY. LAZATIN:
Agree, Your Honor, but ....

JUSTICE PERALTA:
If the public officials themselves do not follow the procedure, the law or the ordinance, are they presumed to [] have performed their duties in the regular manner?[209]

Justice Leonen would have even stronger words, suggesting that the grant of the permits, long prior to the grant of the variance, violated not only Ordinance No. 8119 but even Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act.[210]

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[209] TSN, August 11, 2015, pp. 30-31.

[210] TSN, August 11, 2015, pp. 52-53.

More importantly, I would like to emphasize the difference in opinions as to the correct application of the FAR provisions of Ordinance No. 8119. For example, respondent DMCI-PDI, during the oral arguments, claimed that it is allowed to build up to 66 storeys under the National Building Code and 18 storeys under the Ordinance *even without a variance*.[211] *Amicus*

JUSTICE LEONEN:

Did you sell your property before the action of the Sangguniang Panlungsod?

ATTY. LAZATIN:

Your Honor, there is a difference between the approval of the ... (interrupted)

JUSTICE LEONEN:

Did you build prior to the approval of the Sangguniang Panlungsod as per recommendation of the Manila Zoning Board of Adjustment Appeals?

ATTY. LAZATIN:

Your Honor, if I may be allowed to...?

JUSTICE LEONEN:

No, I have a pending question, did you build prior to the issuance of that resolution or ordinance allowing the variance?

ATTY. LAZATIN:

We build, Your Honor, in accordance with what was permitted, Your Honor.

JUSTICE LEONEN:

I am again a bit curious. Section 3 (J) of Republic Act 3019, the Anti--graft and Corruption Practices Law, it says, "knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage," that's a crime, correct?

ATTY. LAZATIN:

Your honor, may I be allowed to explain?

JUSTICE LEONEN

No, I'm just confirming if there is such a Section 3, paragraph (J)?

ATTY. LAZATIN:

Your Honor, right now I cannot confirm that, Your Honor.

JUSTICE LEONEN

Okay.

[211] DMCI Handout on the Computation of Building Height Limit.

curiae Architect Emmanuel Cuntapay posits that with the maximum FAR of 4, respondent DMCI-PDI "is allowed to construct 18.24 habitable stories or floors for Torre de Manila" or up to 25 actual floors if we add the seven floors allotted as parking areas, even without a variance.[212] The OSG, on the other hand, would argue that DMCI-PDI is entitled to build only up to seven floors without a variance.[213] Meanwhile, Acting Executive Director Johnson V. Domingo of the Department of Public Works and Highways computes the BHL at 7, 19, or 56 storeys, depending on the factors to be considered.[214] All told, the issue as to the correct application of the FAR provisions and the resulting maximum allowable building height of the Torre de Manila *sans variance* is a technical issue which this Court is not equipped to answer at this time. This issue is separate and distinct (albeit, admittedly related) to the issue regarding the propriety of the grant of the variance, which as earlier explained also involves the resolution of certain factual issues attending its grant. Thus, I find that a remand to the City of Manila is all the more appropriate and necessary in view of the critical questions of fact and technical issues still to be resolved.

In any case, the City of Manila would be well advised to note that many of the textual prescriptions of Sections 45, 53, 47, and 48 are also textually imbedded in the terms of Section 60.

The first condition requires a showing that conforming to the provisions of the Ordinance will cause "undue hardship" on the part of the owner due to the physical conditions of the property, *e.g.*, topography, shape, *etc.*, which are not "self-created." Petitioner KOR has alleged that the Torre de Manila, because of its height, will have an "adverse impact" on the Rizal Park and the Rizal Monument by "diminishing its value," "scale and importance." Section 47 of Ordinance No. 8119, on

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[212] According to Architect Cuntapay, this is because the GFA computation in the IRR of the Building Code excludes non-habitable areas such as covered areas for parking and driveways, among others. (*Rollo*, pp. 2749-2750.)

[213] *Id.* at 2884.

[214] *Id.* at 2974-2977.

the other hand, prohibits any development that will "adversely impact" the heritage significance of a property. Correlating the foregoing to this first condition of Section 60, the City of Manila should *consider* what is it in the physical (and not self--created) conditions of the lot on which the Torre de Manila stands will cause undue hardship to DMCI-PDI unless a variance is granted. The City of Manila should also *consider* whether granting the variance will be consistent with the heritage, environmental and aesthetic standards of the Ordinance, including Section 47.

The second condition requires a showing that the proposed variance is the "minimum deviation necessary to permit reasonable use of the property." Petitioner KOR alleges that the Torre de Manila, at 19 floors, obstructs the view of the Rizal Monument, among its other allegations relating to the height of the Torre de Manila. The City of Manila should thus *consider* what the minimum deviation from the prescribed FAR 4 may be allowed the project, again *consistent* with the heritage, environmental, and aesthetic standards of Ordinance No. 8119. This includes a determination of the maximum number of storeys Torre de Manila may be allowed to have that would cause: (1) minimum deviation from the prescribed FAR; and (2) minimal to no adverse effect on the heritage significance of nearby cultural properties.

The third condition requires a showing that the variance will not "alter the physical character of the zone, or substantially or permanently injure the use of the other properties in the zone." Petitioner KOR has alleged that the Torre de Manila has diminished the scale and importance of the Rizal Park and the Rizal Monument. Section 48, on aesthetic considerations, requires that all projects be designed in an "aesthetically pleasing manner" and that their "natural environmental character" be considered especially in relation to "adjacent properties." In these lights, the City of Manila should *consider* the FAR variance that may be allowed the Torre of Manila, if any, which will not injure or alter the physical character of the zone and its adjacent properties, pursuant to the standards both laid down by Section 48.

The fourth condition requires a showing that the variance will not "weaken the general purpose of the Ordinance" or "adversely affect the public health, safety, and welfare." The fifth condition requires that the variance will be in "harmony with the spirit of the Ordinance." These two conditions encapsulate my view that the City of Manila has purposively embraced the modern, expanded concept of police power in the context of zoning ordinances. To my mind, they stand as shorthand instructions to the City of Manila in deciding the balance between enforcing the standards set forth in Sections 45, 53, 47 and 48; and Sections 60 to 62, to *consider* the Ordinance's overriding heritage, environmental, and aesthetic objectives.

Further, I would like to emphasize that my view and proposed disposition of the case do **not** entail a finding that Section 45, in relation to Section 53, and Sections 47 and 48, are already applicable for purposes of prohibiting the Torre de Manila construction project. On the contrary, the proposed ruling is limited to this: that Section 45 in relation to Sections 53, 47, and 48, *by their terms and express intent*, must be **considered** by the City of Manila in making its decisions respecting the challenged development. I propose that the City of Manila must *consider* DMCI-PDI's proposal against the standards clearly set by the provisions before it makes its decisions. The standard under Section 47 is clear: that the proposed development will **not adversely impact** the heritage significance of the heritage property. Section 48 is also clear when it states that it is "in the public interest that all projects are designed and developed in a safe, efficient and **aesthetically pleasing manner**." Section 53 also clearly characterizes the protection of view enjoyed by the public as a "regulation." These are standards textually operating as regulations and not mere guidelines.

To clarify, I do not propose that the Court rule on the legality or propriety of the variance granted to DMCI-PDI under Section 60. Rather, I propose that the ruling be limited thus: the City of Manila must *consider* whether DMCI-PDI's proposed project

meets the definition and conditions of a "unique" property under Section 60, standing alone by the terms of Section 60, but also *in relation* to the heritage, environmental, and aesthetic standards of Sections 45, 53, 47 and 48. Without controlling *how* its discretion will thereafter be exercised, I vote that the Court direct the **re-evaluation** by the City of Manila, through the CPDO, of the permits previously issued in favor of the Torre de Manila project, including conducting a hearing, receiving evidence, and deciding compliance with the foregoing standards/ requirements under Ordinance No. 8119.

I also do not propose a *pro hac vice* conversion of the proceedings into a "contested case" under the terms of the Administrative Code.[215] I do, however, believe that notice and hearing requirements[216] must be observed, with all concerned parties given the opportunity to present evidence and argument on all issues.[217] Section 77 of Ordinance No. 8119 allows for the filing of a verified complaint before the MZBAA for any violation of any provision of the Ordinance or of any clearance or permits issued pursuant thereto, including oppositions to applications for clearances, variance, or exception. Otherwise put, I believe that the requirements of *Ang Tibay v. Court of Industrial Relations*[218] and *Alliance for the Family*

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[215] ADMINISTRATIVE CODE, Book VII, Chapter 1, Sec. 2(5). "Contested case" means **any proceeding**, including licensing, in which the legal rights, duties or privileges asserted by specific parties as required by the Constitution or by law are to be determined **after hearing**. (Emphasis supplied.)

[216] ADMINISTRATIVE CODE, Book VII, Chapter III, Sec. 11. Notice and Hearing in Contested Cases. –

(1) In any contested case, all parties shall be entitled to notice and hearing. The notice shall be served at least five (5) days before the date of the hearing and shall state the date, time and place of the hearing.

(2) The parties shall be given opportunity to present evidence and argument on all issues. If not precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement or default

(3) The agency shall keep an official record of its proceedings.

[217] See *Alliance for the Family Foundation, Philippines, Inc. v. Garin*, G.R. No. 217872, August 24, 2016.

[218] 69 Phil. 635 (1940).

Foundation, Philippines, Inc. v. Garin[219] are deemed written into Section 77.

With these clarifications, I vote that the City, through the Mayor and his representatives, be compelled by *mandamus* to consider its own conservation standards and LUIC requirements.

I find the concern about estoppel irrelevant inasmuch as petitioner KOR's alleged development proposals appear to have been made more than five decades ago, and long before either the 1987 Constitution or Ordinance No. 8119 were ever conceived.

Finally, it may well have been Rizal's wish to be buried a certain place and in a certain way. If we were to pursue this line of reasoning to its logical conclusion, this argument would forbid the establishment of a Rizal Monument, a Rizal Park, and celebration of Rizal Day. In any case, and while not blind to history, we must be reminded that this Court, in the words of Justice Tinga, is a judge not of history but of the Constitution and the law.[220]

To reiterate, I do not propose to resolve the factual issues raised by the parties regarding DMCI-PDI's alleged violation of existing regulations under Ordinance No. 8119 (including compliance with the FAR and variance requirements), whether the Torre de Manila is a nuisance, and whether DMCI-PDI acted in good faith in the construction of the project. The constitutional guarantee of due process requires that such matters first be heard and resolved by the City of Manila, the appropriate administrative agency, or the courts.

I realize that, for all the debates during the oral arguments, it was only *after* the case has been submitted for resolution that the Court was first made aware, through the writer of this Dissenting Opinion, of the existence of Section 45 in relation to 53, and Sections 47 and 48 of Ordinance No. 8119, and their

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[219] *Supra*

[220] *Gudani v. Senga*, G.R. No. 170165, August 15, 2006, 498 SCRA 671, 698-699.

relevance in the resolution of this case. **No party to the case or member of this Court had previously raised the applicability of these Sections of Ordinance No. 8119.** I argued to remand the case to the City of Manila precisely for it to re-evaluate the grant of the permits to DMCI-PDI in light of the cited Sections and to hear the parties thereon.

A careful reading of the *Decision* would show that the majority concedes that there *is* a law that "provides for standards and guidelines to regulate development projects x x x within the City of Manila."[221] However, instead of a remand, they went on to find that the standards and guidelines do not apply to "the construction of a building outside the boundaries of a historic site or facility, where such building may affect the background of a historic site."[222] With respect, I disagree with the majority's **peremptory dismissal** of the case on the basis of such finding, considering that none of the parties were ever heard on this specific issue, *i.e.*, the application of Section 45 in relation to 53, and Sections 47 and 48 of Ordinance No. 8119 based on the facts of the case.

The constitutional guarantee of due process dictates that parties be given an opportunity to be heard before judgment is rendered. Here, the parties were not heard on the specific subject of the performance standards prescribed by Ordinance No. 8119, insofar as they appear relevant to this case. A remand would have been the just course of action. The absence of such a hearing, I would like to emphasize, is precisely the reason why I hesitate to attribute bad faith or grave abuse of discretion, at this point, on the part of any one party. A remand would have allowed for the building of a factual foundation of record with respect to underlying questions of fact (and even policy) not appropriate to be decided, in the first instance, by the Court. I imagine that a remand would provide the opportune venue to hear and receive evidence over alternate/moderate views, including, as I said, the maximum number of storeys the Torre de Manila may be

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[221] Decision, p. 9.

[222] Decision, pp. 11, 12-13.

allowed that would pose minimal deviation from the prescribed LUICs and still be considered consistent with the other performance standards under the Ordinance.

Furthermore, while the majority insists on according respect to the City of Manila's exercise of discretion, it seems to me that **their finding *at this point* that the standards provided under Ordinance No. 8119 are not applicable does more to preempt the City of Manila in the exercise of its discretion than an order requiring it to *merely consider* their application**. This, despite clear indications that they have not been considered at all during the processing of DMCI-PDI's application. That the City of Manila has not considered these standards is a finding of fact that the Court can make because this was **admitted** as much by the local government itself when, based on its erroneous reading of its own zoning ordinance, it claimed that there is no law which regulates constructions alleged to have impaired the sightlines of a historical site/facility. At the risk of sounding repetitive, I believe a remand would, at the very least, allow the City of Manila to consider and settle, at the first instance, the matter of whether the Sections in question are applicable or not.

To end, I am reminded of the view, first expressed in *Tañada v. Angara*,[223] that even non-self-executing provisions of the Constitution may be "used by the judiciary as aids or as guides in the exercise of its power of judicial review."[224] More than anything, this case presented an opportunity for the Court to recognize that aspirational provisions contained in Article II (Declaration of Principles and State Policies) and many more similar provisions spread in the Constitution, such as Sections 14 and 15, Article XIV, are **not**, in the words of Chief Justice Reynato Puno, "meaningless constitutional patter."[225] These provisions have constitutional worth. They define our values

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[223] *Supra* note 49.

[224] *Id.* at 54.

[225] *Agabon v. National Labor Relations Commission, supra* note 51, at 634 (Puno, *J.*, *dissenting*).

and embody our ideals and aspirations as a people. The command under Section 15, Article XIV of the Constitution for the State to conserve the nation's historical and cultural heritage is as much addressed to this Court, as it is to Congress and to the Executive. We should heed this command by ordering a remand, more so where there is an obvious intent on the part of the City of Manila, in the exercise of its delegated police power from Congress, to incorporate heritage conservation, aesthetics, and environment protection of views into its zoning ordinance.

In this modern world, heritage conservation has to constantly compete with other equally important values such as property and property development. In litigations involving such clash of values, this Court sets the tone on the judicial solicitude it is duty-bound to display towards aspirational constitutional values, especially when implemented by specific and operable legislation. Here, we had the unique opportunity to give the value of heritage conservation, involving as it does the preservation of fragile and vulnerable resources, all the breathing space[226] to make its case. This Decision, however, seems to have achieved the complete opposite.

For all the foregoing reasons, I vote to PARTIALLY GRANT the petition.

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[226] See *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc.*, G.R. No. L-31195, June 5, 1973, 51 SCRA 189.

SECOND DIVISION

[A.M. No. MTJ-16-1876. April 26, 2017]
(Formerly OCA I.P.I. No. 14-2668-MTJ)

JOCELYN MCLAREN, JUNARIO VILLAMAYOR, RESTITUTO BARLES, JANG JONG DAE, AMANDA TALIBONG, NOMER A. TALIBONG and EMELYN FREJOLES, *complainants, vs.* **HONORABLE JACINTO C. GONZALES, Presiding Judge Municipal Trial Court in Cities, Branch 2, Olongapo City,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE CIRCULAR NO. 25; PRESIDING JUDGES OF ALL TRIAL COURTS ARE MANDATED TO WEAR JUDICIAL ROBE DURING COURT SESSIONS; PENALTY FOR VIOLATION.— Respondent Judge Gonzales admitted not wearing the judicial robe due to the extreme heat, non-functioning air-conditioning units and regular brownouts. His justification for not wearing his judicial robe is unacceptable. x x x Respondent's act of not wearing the judicial robe during court sessions is violative of Administrative Circular No. 25 dated June 9, 1989, thus: Pursuant to Sections 5 and 6, Article 8 of the Constitution and in order to heighten public consciousness on the solemnity of judicial proceedings, it is hereby directed that beginning Tuesday, August 1, 1989, all Presiding Judges of all Trial Courts **shall** wear black robes during sessions of their respective courts. Under the principles of statutory construction, the term "shall" is mandatory. The Circular orders all Presiding Judges of all trial courts to wear their black robes during sessions in their respective courts. Under Section 9(4), Rule 140 of the Revised Rules of Court, violation of Supreme Court rules, directives and circulars is considered a less serious charge and punishable under Section 11(B) of the Revised Rules of Court with suspension from office without salary and other benefits for not less than one month nor more than three months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

D E C I S I O N

PERALTA, *J.*:

On March 17, 2014, complainants Jocelyn Mclaren, *et al.* filed an administrative complaint against respondent Judge Jacinto C. Gonzales, Municipal Trial Court in Cities (*MTCC*), Branch 2, Olongapo City for gross misconduct in connection with Civil Case No. 7439, entitled "*Subic International Hotel Corp. v. Jocelyn Mclaren, et al.,*" and for gross dishonesty in failing to disclose that he had a pending criminal case filed against him when he applied for judgeship in the Judiciary.

Complainants, who were the defendants in Civil Case No. 7439 for Unlawful Detainer, alleged that their counsel was badly treated in three hearings in the following manner: (1) he was not allowed to argue or discuss their objections to the plaintiffs' motion for preliminary injunction and their two motions to dismiss *ad cautelam*; (2) most of the manifestations of their counsel were cut short by respondent even while he was just beginning to say something; and (3) he was ordered to sit down three times. Respondent allegedly had a visible ferocious negative facial countenance when he addressed their counsel.

Moreover, complainants said that respondent arbitrarily issued in open court, without legal basis, an Order denying all motions of the parties. They alleged that respondent was arrogant during the hearings, not wearing the judicial robe, incessantly puffing a lighted cigarette, and unnecessarily banging the gavel.

Complainants had the impression that respondent lost the neutrality of an impartial judge; hence, they filed an Urgent *Ex-Parte* Motion for Inhibition, which motion was denied by respondent in an Order[1] dated January 21, 2014.

In addition, complainants alleged that respondent should be held liable for gross dishonesty, since he failed to disclose that

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[1] Records, p. 77.

he had a pending criminal case for sexual harassment filed in 2002 in connection with his application for judgeship and his appointment to the Judiciary in December 2005.

In his Comment,[2] respondent stated that the charge against him stemmed from the denial of complainants' motion for inhibition from Civil Case No. 7439 on the ground that it was already submitted for decision. Respondent asserted that the charge of impropriety alleged to have been committed by him during the hearings was not true and was not a valid reason and legal basis for his inhibition and administrative sanction. Assuming that there were instances wherein counsels were cut short by him in the course of the hearing, respondent said that those were judgment calls designed to maintain orderly court proceedings and were made in the performance of duty in good faith.

Moreover, respondent averred that complainants' contention that he arbitrarily and without legal basis issued in open court an order denying all pending motions, including their motion to dismiss, is belied by the Order[3] issued on August 29, 2013. He maintained that the order denying complainants' motion to dismiss was not tainted by bias, negligence or any improper motives, but it was issued upon due consideration of the arguments of the parties in open court and contained in their respective pleadings. He also said that there was no factual basis in complainants' imputation of ferocity, negative facial countenance and arrogance on his part in the conduct of the trial.

Further, respondent stated that complainants' motion to inhibit him from taking cognizance of Civil Case No. 7439, which motion was filed after the case was submitted for decision, was an abuse of judicial process and dilatory tactic to prejudice the plaintiff and would prove antithetical to the speedy administration of justice. According to respondent, under the circumstances, he could not simply relinquish his sworn duty to finally dispose

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[2] *Id*. at 74.

[3] *Id*. at 78.

of the case at the risk of violating his constitutional mandate to decide the subject case within the 90-day period. While Rule 137, Section 1 of the Rules of Court allows a presiding judge to voluntarily inhibit himself from hearing a case, which is primarily a matter of conscience and addressed to his sound discretion, the decision must be based on his rational and logical assessment of the circumstances obtaining in the case pending before him.

In addition, respondent stated that, except for the alleged non-wearing of the judicial robe which at some instances could not be avoided due to the extreme heat, the failing air-conditioning unit and the regular daily brownouts, equally without factual basis were complainants' allegation that he unnecessarily banged the gavel and smoked during trial.

Finally, respondent contended that the issue raised by complainants relative to the other cases filed against him in another forum is a matter within the cognizance of the appropriate body where they are pending. As such, said issue cannot be considered or taken together with this administrative complaint without violating established rules of procedure and non-forum shopping.

Respondent prays that this complaint be dismissed for lack of merit.

This administrative complaint raises the following issues:

1. Whether or not respondent Judge Gonzales should be held administratively liable for gross misconduct for his alleged hostile behavior toward complainants' counsel which resulted in the filing of a motion for inhibition, and for his alleged arrogance during the hearing with his non-wearing of the judicial robe, smoking and unnecessarily banging the gavel; and

2. Whether or not respondent Judge Gonzales should be held liable for dishonesty for his failure to disclose in his application for judgeship before the Judicial and Bar Council that he has a pending criminal case.

On February 23, 2016, the Office of the Court Administrator (*OCA*) submitted a report[4] and recommended that the administrative complaint against respondent Judge Gonzales be re-docketed as a regular administrative matter, and that respondent be found guilty of violating Supreme Court Administrative Circular No. 25 dated June 9, 1989 for non-wearing of the judicial robe during court sessions and be fined therefor.

The OCA stated that the allegation that respondent Judge Gonzales smoked cigarettes during trial, displayed arrogance in the conduct of the proceedings, and unnecessarily banged the gavel should be dismissed in the absence of substantial evidence by the complainants to support the charge.

In regard to the propriety of inhibiting from the case, the OCA stated that, under Supreme Court Circular No. 7 dated November 10, 1980, it has been settled that orders of inhibition are not administrative in character, but are judicial in nature. Questions on the competency of the inhibiting judge should be determined with finality in an appropriate judicial proceeding. Moreover, complainants failed to provide substantial evidence that respondent was partial to the other party. The presumption that official duty has been performed will govern.

In regard to the issue of dishonesty, the OCA stated that it is essentially the same allegation raised in OCA I.P.I. No. 09-2119-MTJ, and the Court had already resolved the issue in a Resolution dated March 9, 2009, hence, the charge of dishonesty by herein complainants should be dismissed and the matter considered closed and terminated.

The Court sustains the findings of the OCA that the charge of dishonesty against respondent should be dismissed as it has been resolved in OCA IPI No. 09-2119-MTJ. There is insufficient evidence against respondent in regard to all other charges of complainants, except the non-wearing of his judicial robe.

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[4] *Rollo*, p. 89.

Respondent Judge Gonzales admitted not wearing the judicial robe due to the extreme heat, non-functioning air-conditioning units and regular brownouts. His justification for not wearing his judicial robe is unacceptable. In *Atty. Tiongco v. Judge Savillo*,[5] the Court said:

> Respondent judge admitted that he does not wear the black robe, but seeks to excuse his non-compliance because of his illness. The Court cannot accept his plea. In *Chan v. Majaducon*, where respondent judge tried to excuse his non-compliance because of his hypertension, we held that:
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> The wearing of robes by judges during official proceedings, which harks back to the 14th century, is not an idle ceremony. Such practice serves the dual purpose of "heighten[ing] public consciousness on the solemnity of judicial proceedings," as Circular No. 25 states, and of impressing upon the judge, the exacting obligations of his office. As well put by an eminent jurist of another jurisdiction:
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> > [J]udges [are] x x x clothed in robes, not only, that they who witness the administration of justice should be properly advised that the function performed is one different from, and higher, than that which a man discharges as a citizen in the ordinary walks of life; but also, in order to impress the judge himself with the constant consciousness that he is a high priest in the temple of justice and is surrounded with obligations of a sacred character that he cannot escape and that require his utmost care, attention and self-suppression.
>
> Consequently, a judge must take care not only to remain true to the high ideals of competence and integrity his robe represents, but also that he wears one in the first place.[6]

Respondent's act of not wearing the judicial robe during court sessions is violative of Administrative Circular No. 25 dated June 9, 1989, thus:

> Pursuant to Sections 5 and 6, Article 8 of the Constitution and in order to heighten public consciousness on the solemnity of judicial

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[5] 520 Phil. 573 (2006).

[6] *Atty. Tiongco v. Judge Savillo, supra*, at 585-586.

proceedings, it is hereby directed that beginning Tuesday, August 1, 1989, all Presiding Judges of all Trial Courts **shall** wear black robes during sessions of their respective courts.[7]

Under the principles of statutory construction, the term "shall" is mandatory.[8] The Circular orders all Presiding Judges of all trial courts to wear their black robes during sessions in their respective courts.

Under Section 9(4), Rule 140 of the Revised Rules of Court, violation of Supreme Court rules, directives and circulars is considered a less serious charge and punishable under Section 11(B) of the Revised Rules of Court with suspension from office without salary and other benefits for not less than one month nor more than three months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

WHEREFORE, the Court finds respondent Judge Jacinto C. Gonzales, Municipal Trial Court in Cities, Branch 2, Olongapo City, guilty of violating Administrative Circular No. 25 dated June 9, 1989. Respondent Judge Jacinto C. Gonzales is **ORDERED** to **PAY** a fine of Twelve Thousand Pesos (₱12,000.00), with a warning that the commission of a similar act in the future shall be dealt with more severely.

SO ORDERED.

Carpio (*Chairperson*), *Mendoza, Leonen,* and *Martires, JJ.,* concur.

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[7] Emphasis supplied.

[8] *Gonzales v. Chavez*, G.R. No. 97351, February 4, 1992, 205 SCRA 816, 836.

THIRD DIVISION

[G.R. No. 178467. April 26, 2017]

SPS. CRISTINO & EDNA CARBONELL, *petitioners, vs.* **METROPOLITAN BANK AND TRUST COMPANY,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; GENERAL BANKING ACT OF 2000; BANKS ARE DEMANDED THE HIGHEST STANDARDS OF INTEGRITY AND PERFORMANCE; COMPLIANCE HEREIN DETERMINED IN ACCORDANCE WITH THE PARTICULAR CIRCUMSTANCES IN EACH CASE; GROSS NEGLIGENCE, DISCUSSED.— The General Banking Act of 2000 demands of banks the highest standards of integrity and performance. As such, the banks are under obligation to treat the accounts of their depositors with meticulous care. However, the banks' compliance with this degree of diligence is to be determined in accordance with the particular circumstances of each case. x x x Gross negligence connotes want of care in the performance of one's duties; it is a negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. In order for gross negligence to exist as to warrant holding the respondent liable therefor, the petitioners must establish that the latter did not exert any effort at all to avoid unpleasant consequences, or that it wilfully and intentionally disregarded the proper protocols or procedure in the handling of US dollar notes and in selecting and supervising its employees.

2. CIVIL LAW; DAMAGES; MORAL AND EXEMPLARY DAMAGES IN BREACH OF CONTRACT NOT PROPER IN THE ABSENCE OF BAD FAITH.— The relationship

existing between the petitioners and the respondent that resulted from a contract of loan was that of a creditor-debtor. Even if the law imposed a high standard on the latter as a bank by virtue of the fiduciary nature of its banking business, bad faith or gross negligence amounting to bad faith was absent. Hence, there simply was no legal basis for holding the respondent liable for moral and exemplary damages. x x x Under the law, moral damages for *culpa contractual* or breach of contract are recoverable only if the defendant acted fraudulently or in bad faith, or is found guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations. The breach must be wanton, reckless, malicious or in bad faith, oppressive or abusive. In order to maintain their action for damages, the petitioners must establish that their injury resulted from a breach of duty that the respondent had owed to them, that is, there must be the concurrence of injury caused to them as the plaintiffs and legal responsibility on the part of the respondent. Underlying the award of damages is the premise that an individual was injured in contemplation of law.

3. ID.; ID.; DAMAGE DISTINGUISHED FROM INJURY.— [W]e should distinguish between damage and injury. In *The Orchard Golf & Country Club, Inc. v. Yu,* the Court has fittingly pointed out the distinction, *viz.:* x x x Injury is the illegal invasion of a legal right, damage is the loss, hurt, or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. These situations are often called *damnum absque injuria.* In every situation of *damnum absque injuria,* therefore, the injured person alone bears the consequences because the law affords no remedy for damages resulting from an act that does not amount to a legal injury or wrong.

APPEARANCES OF COUNSEL

Campanilla & Ponce Law Firm for petitioner.
Alfonso M. Cruz for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The petitioners assail the decision promulgated on December 7, 2006,[1] whereby the Court of Appeals (CA) affirmed with modification the decision rendered on May 22, 1998[2] by the Regional Trial Court, Branch 157, in Pasig City (RTC) dismissing the petitioners' complaint in Civil Case No. 65725 for its lack of merit, and awarded attorney's fees under the respondent's counterclaim.

Antecedents

The petitioners initiated against the respondent Civil Case No. 65725, an action for damages, alleging that they had experienced emotional shock, mental anguish, public ridicule, humiliation, insults and embarrassment during their trip to Thailand because of the respondent's release to them of five US$100 bills that later on turned out to be counterfeit. They claimed that they had travelled to Bangkok, Thailand after withdrawing US$1,000.00 in US$100 notes from their dollar account at the respondent's Pateros branch; that while in Bangkok, they had exchanged five US$100 bills into Baht, but only four of the US$100 bills had been accepted by the foreign exchange dealer because the fifth one was "no good;" that unconvinced by the reason for the rejection, they had asked a companion to exchange the same bill at Norkthon Bank in Bangkok; that the bank teller thereat had then informed them and their companion that the dollar bill was fake; that the teller had then confiscated the US$100 bill and had threatened to report them to the police if they insisted in getting the fake dollar bill back; and that they had to settle for a Foreign Exchange Note receipt.[3]

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[1] *Rollo*, pp. 35-50; penned by Associate Justice Lucenito N. Tagle (retired) and concurred in by Associate Justice Roberto A. Barrios (retired) and Associate Justice Mario L. Guariña III (retired).

[2] *Id*. at 53-61; penned by Judge Vivencio S. Baclig (retired).

[3] *Id*. at 35-37.

The petitioners claimed that later on, they had bought jewelry from a shop owner by using four of the remaining US$100 bills as payment; that on the next day, however, they had been confronted by the shop owner at the hotel lobby because their four US$100 bills had turned out to be counterfeit; that the shop owner had shouted at them: "You Filipinos, you are all cheaters!;" and that the incident had occurred within the hearing distance of fellow travelers and several foreigners.

The petitioners continued that upon their return to the Philippines, they had confronted the manager of the respondent's Pateros branch on the fake dollar bills, but the latter had insisted that the dollar bills she had released to them were genuine inasmuch as the bills had come from the head office; that in order to put the issue to rest, the counsel of the petitioners had submitted the subject US$100 bills to the Bangko Sentral ng Pilipinas (BSP) for examination; that the BSP had certified that the four US$100 bills were near perfect genuine notes;[4] and that their counsel had explained by letter their unfortunate experience caused by the respondent's release of the fake US dollar bills to them, and had demanded moral damages of ₱10 Million and exemplary damages.[5]

The petitioners then sent a written notice to the respondent, attaching the BSP certification and informing the latter that they were giving it five days within which to comply with their demand, or face court action.[6] In response, the respondent's counsel wrote to the petitioners on March 1996 expressing sympathy with them on their experience but stressing that the respondent could not absolutely guarantee the genuineness of each and every foreign currency note that passed through its system; that it had also been a victim like them; and that it had exercised the diligence required in dealing with foreign currency notes and in the selection and supervision of its employees.[7]

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[4] *Id*. at 37-38.

[5] *Id*. at 38.

[6] *Id*. at 38.

[7] *Id*. at 38-39.

Prior to the filing of the suit in the RTC, the petitioners had two meetings with the respondent's representatives. In the course of the two meetings, the latter's representatives reiterated their sympathy and regret over the troublesome experience that the petitioners had encountered, and offered to reinstate US$500 in their dollar account, and, in addition, to underwrite a round-trip all-expense-paid trip to Hong Kong, but they were adamant and staged a walk-out.[8]

In its judgment rendered on May 22, 1998,[9] the RTC ruled in favor of the respondent, disposing as follows:

WHEREFORE, in the light of all the foregoing, judgment is hereby rendered:

1. Dismissing plaintiff's complaint for lack of merit;
2. On the counterclaim, awarding Metrobank the amount of ₱20,000.00 as attorney's fees.

SO ORDERED.[10]

The petitioners appealed, but the CA ultimately promulgated its assailed decision on December 7, 2006 affirming the judgment of the RTC with the modification of deleting the award of attorney's fees,[11] to wit:

As to the award of attorneys fees, we agree with appellants that there is simply no factual and legal basis thereto. Unquestionably, appellants filed the present case for the humiliation and embarrassment they suffered in Bangkok. They instituted the complaint in their honest belief that they were entitled to damages as a result of appellee's issuance of counterfeit dollar notes. Such being the case, they should not be made answerable to attorney's fees. It is not good public policy to put a premium on the right to litigate where such right is exercised in good faith, albeit erroneously.

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[8] *Id.* at 55.

[9] *Supra* note 2.

[10] *Id.* at 48-50.

[11] *Supra* note 1.

WHEREFORE, the appealed decision is **AFFIRMED** with modification that the award of attorney's fees is deleted.

SO ORDERED.

Issues

Hence, this appeal, with the petitioners contending that the CA gravely erred in affirming the judgment of the RTC. They insist that inasmuch as the business of banking was imbued with public interest, the respondent's failure to exercise the degree of diligence required in handling the affairs of its clients showed that it was liable not just for simple negligence but for misrepresentation and bad faith amounting to fraud; that the CA erred in giving weight and relying on the news clippings allegedly showing that the "supernotes" had deceived even the U.S. Secret Service and Central Intelligence Agency, for such news were not based on facts.[12]

Ruling of the Court

The appeal is partly meritorious.

The General Banking Act of 2000 demands of banks the highest standards of integrity and performance. As such, the banks are under obligation to treat the accounts of their depositors with meticulous care.[13] However, the banks' compliance with this degree of diligence is to be determined in accordance with the particular circumstances of each case.

The petitioners argue that the respondent was liable for failing to observe the diligence required from it by not doing an act from which the material damage had resulted by reason of inexcusable lack of precaution in the performance of its duties.[14] Hence, the respondent was guilty of gross negligence, misrepresentation and bad faith amounting to fraud.

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[12] *Id.* at 18-19.

[13] *Philippine Savings Bank v. Chowking Food Corporation,* G.R. No. 177526, July 4, 2008, 557 SCRA 318, 331.

[14] *Rollo*, p. 26.

The petitioners' argument is unfounded.

Gross negligence connotes want of care in the performance of one's duties; it is a negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[15]

In order for gross negligence to exist as to warrant holding the respondent liable therefor, the petitioners must establish that the latter did not exert any effort at all to avoid unpleasant consequences, or that it wilfully and intentionally disregarded the proper protocols or procedure in the handling of US dollar notes and in selecting and supervising its employees.

The CA and the RTC both found that the respondent had exercised the diligence required by law in observing the standard operating procedure, in taking the necessary precautions for handling the US dollar bills in question, and in selecting and supervising its employees.[16] Such factual findings by the trial court are entitled to great weight and respect especially after being affirmed by the appellate court, and could be overturned only upon a showing of a very good reason to warrant deviating from them.

In this connection, it is significant that the BSP certified that the falsity of the US dollar notes in question, which were "near perfect genuine notes," could be detected only with extreme difficulty even with the exercise of due diligence. Ms. Nanette Malabrigo, BSP's Senior Currency Analyst, testified that the subject dollar notes were "highly deceptive" inasmuch as the paper used for them were similar to that used in the printing of the genuine notes. She observed that the security fibers and

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[15] *Comsaving Banks (now GSIS Family Bank) v. Capistrano*, G.R. No. 170942, August 28, 2013, 704 SCRA 72, 87-88.

[16] *Rollo*, p. 59.

the printing were perfect except for some microscopic defects, and that all lines were clear, sharp and well defined.[17]

Nonetheless, the petitioners contend that the respondent should be liable for moral and exemplary damages[18] on account of their suffering the unfortunate experience abroad brought about by their use of the fake US dollar bills withdrawn from the latter.

The contention cannot be upheld.

The relationship existing between the petitioners and the respondent that resulted from a contract of loan was that of a creditor-debtor.[19] Even if the law imposed a high standard on the latter as a bank by virtue of the fiduciary nature of its banking business, bad faith or gross negligence amounting to bad faith was absent. Hence, there simply was no legal basis for holding the respondent liable for moral and exemplary damages. In breach of contract, moral damages may be awarded only where the defendant acted fraudulently or in bad faith. That was not true herein because the respondent was not shown to have acted fraudulently or in bad faith. This is pursuant to Article 2220 of the *Civil Code*, to wit:

> Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. **The same rule applies to breaches of contract where defendant acted fraudulently or in bad faith.**

With the respondent having established that the characteristics of the subject dollar notes had made it difficult even for the BSP itself as the country's own currency note expert to identify the counterfeiting with ease despite adhering to all the properly

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[17] *Id.* at 56-58.

[18] *Id.* at 29-30.

[19] Article 1980 of the *Civil Code* provides that fixed, savings, current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan.

laid out standard operating procedure and precautions in the handling of US dollar bills, holding it liable for damages in favor of the petitioners would be highly unwarranted in the absence of proof of bad faith, malice or fraud on its part. That it formally apologized to them and even offered to reinstate the USD$500.00 in their account as well as to give them the all-expense-paid round trip ticket to Hong Kong as means to assuage their inconvenience did not necessarily mean it was liable. In civil cases, an offer of compromise is not an admission of liability, and is inadmissible as evidence against the offeror.[20]

Even without taking into consideration the news clippings to the effect that the US Secret Service and Central Intelligence Agency had themselves been deceived by the 1990 series of the US dollar notes infamously known as the "supernotes," the record had enough to show in that regard, not the least of which was the testimony of Ms. Malabrigo as BSP's Senior Currency Analyst about the highly deceptive nature of the subject US dollar notes and the possibility for them to pass undetected.

Also, the petitioners' allegation of misrepresentation on the part of the respondent was factually unsupported. They had been satisfied with the services of the respondent for about three years prior to the incident in question.[21] The incident was but an isolated one. Under the law, moral damages for *culpa contractual* or breach of contract are recoverable only if the defendant acted fraudulently or in bad faith, or is found guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations.[22] The breach must be wanton,

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[20] Section 27, Rule 130 of the *Rules of Court* pertinently states:

Section 27. *Offer of compromise not admissible*.– In civil cases, an offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror.

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[21] *Rollo*, pp. 60-61.

[22] *Philippine Telegraph & Telephone Corp. v. Court of Appeals,* G.R. No. 139268, September 3, 2002, 388 SCRA 270, 276-277.

reckless, malicious or in bad faith, oppressive or abusive.[23] In order to maintain their action for damages, the petitioners must establish that their injury resulted from a breach of duty that the respondent had owed to them, that is, there must be the concurrence of injury caused to them as the plaintiffs and legal responsibility on the part of the respondent. Underlying the award of damages is the premise that an individual was injured in contemplation of law. In this regard, there must first be a breach of some duty and the imposition of liability for that breach before damages may be awarded; and the breach of such duty should be the proximate cause of the injury.[24] That was not so in this case.

It is true that the petitioners suffered embarrassment and humiliation in Bangkok. Yet, we should distinguish between damage and injury. In *The Orchard Golf & Country Club, Inc. v. Yu*,[25] the Court has fittingly pointed out the distinction, *viz.*:

> x x x Injury is the illegal invasion of a legal right, damage is the loss, hurt, or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. These situations are often called *damnum absque injuria.*[26]

In every situation of *damnum absque injuria*, therefore, the injured person alone bears the consequences because the law affords no remedy for damages resulting from an act that does not amount to a legal injury or wrong. For instance, in *BPI Express Card Corporation v. Court of Appeals*,[27] the Court turned

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[23] *Equitable Banking Corporation v. Calderon,* G.R. No. 156168; December 14, 2004, 446 SCRA 271, 277.

[24] *BPI Express Card v. Court of Appeals*, G.R. No. 120639, September 25, 1998, 296 SCRA 260, 273.

[25] G.R. No. 191033, January 11, 2016, 778 SCRA 404.

[26] *Id*. at 421, citing *Custodio v. Court of Appeals*, G.R. No. 116100, February 9, 1996, 253 SCRA 483, 490.

[27] *Supra*, note 24.

down the claim for damages of a cardholder whose credit card had been cancelled *after several defaults in payment*, holding therein that there could be damage *without injury* where the loss or harm was not the result of a violation of a legal duty towards the plaintiff. In such situation, the injured person alone should bear the consequences because the law afforded no remedy for damages resulting from an act that did not amount to a legal injury or wrong.[28] Indeed, the lack of malice in the conduct complained of precluded the recovery of damages.[29]

Here, although the petitioners suffered humiliation resulting from their unwitting use of the counterfeit US dollar bills, the respondent, by virtue of its having observed the proper protocols and procedure in handling the US dollar bills involved, did not violate any legal duty towards them. Being neither guilty of negligence nor remiss in its exercise of the degree of diligence required by law or the nature of its obligation as a banking institution, the latter was not liable for damages. Given the situation being one of *damnum absque injuria*, they could not be compensated for the damage sustained.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on December 7, 2006; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Reyes, Jardeleza,* and *Tijam, JJ.,* concur.

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[28] *Id.* at 272-273.

[29] *Lagon v. Court of Appeals*, G.R. No. 119107, March 18, 2005, 453 SCRA 616, 628.

SPECIAL THIRD DIVISION

[G.R. No. 185565. April 26, 2017]

LOADSTAR SHIPPING COMPANY, INCORPORATED and LOADSTAR INTERNATIONAL SHIPPING COMPANY, INCORPORATED, *petitioners, vs.* **MALAYAN INSURANCE COMPANY, INCORPORATED,** *respondent.*

SYLLABUS

1. CIVIL LAW; DAMAGES; ACTUAL DAMAGES ARE NOT PRESUMED.— [T]he Court reiterates the principle that actual damages are not presumed; it cannot be anchored on mere surmises, speculations or conjectures. As the Court discussed in the Decision dated November 26, 2014, Malayan was not able to prove the pecuniary loss suffered by PASAR for which the latter was indemnified. This is in line with the principle that a subrogee steps into the shoes of the insured and can recover only if the insured likewise could have recovered.

2. ID.; COMMON CARRIERS; DUTY TO OBSERVE EXTRAORDINARY DILIGENCE IN THEIR VIGILANCE OVER THE GOODS THEY TRANSPORT; VIOLATED IN CASE AT BAR.— [T]he Court notes that the petitioners failed to comply with some of the terms of their contract of affreightment with PASAR. It was stipulated that the vessel to be used must not exceed 25 years of age, yet the vessel, MV Bobcat, was more than that age when the subject copper concentrates were transported. Additionally, the petitioners failed to keep the cargo holds and hatches of MV Bobcat clean and fully secured as agreed upon, which resulted in the wettage of the cargo. As common carriers, the petitioners are bound to observe *extraordinary* diligence in their vigilance over the goods they transport, as required by the nature of their business and for reasons of public policy. "Extraordinary diligence is that extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property or rights." When the copper concentrates delivered were contaminated with seawater, the petitioners have failed to exercise extraordinary diligence in the carriage thereof.

3. ID.; DAMAGES; NOMINAL DAMAGES PROPER FOR BREACH OF CONTRACT COMMITTED.— [T]he Court deems it proper to award nominal damages to Malayan. This is in recognition of the breach of contract committed by the petitioners. "So long as there is a violation of the right of the plaintiff—whether based on law, contract or other sources of obligations—an award of nominal damages is proper." Articles 2221 and 2222 of the Civil Code provide: Article 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him. Article 2222. The court may award nominal damages in every obligation arising from any source enumerated in Article 1157, or in every case where any property right has been invaded. "Nominal damages are recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown." "The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances."

PERALTA, *J.*, *concurring and dissenting opinion*:

CIVIL LAW; COMMON CARRIERS; DUTY TO OBSERVE EXTRAORDINARY DILIGENCE IN THEIR VIGILANCE OVER THE GOODS THEY TRANSPORT; VIOLATION THEREOF AND BREACH OF CONTRACT COMMITTED WARRANTS PAYMENT NOT ONLY FOR NOMINAL DAMAGES BUT FOR THE ENTIRE DAMAGE CAUSED TO THE SUBJECT CARGO.— Petitioners are common carriers. Common carriers are defined, under Article 1732 of the Civil Code, as persons, corporations, firms, or associations engaged in the business of carrying or transporting passenger or goods, or both by land, water or air for compensation, offering their services to the public. As such, they are mandated from the nature of their business and for reasons of public policy, to observe the extraordinary diligence in the vigilance over the goods transported by them according to all the circumstances of such case, as required by Article 1733 of the same Code. Furthermore, Article 1735 of the Civil Code provides that, in

> all cases other than those mentioned under Article 1734 thereof, if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required in Article 1733. There being no dispute that the subject cargo sustained damage, the presumption is that it was caused by reason of petitioners' negligence. Thus, it is incumbent upon petitioners to prove that they exercised extraordinary diligence in the vigilance over such goods it contracted for carriage. As held by the CA, petitioners failed in this regard. x x x Under Article 1170 of the Civil Code, those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages. x x x [Petitioners also] are guilty of breach of their contract of affreightment with PASAR. Thus, [they] should be made liable, not only for nominal damages as ruled upon by the majority, but for the entire damage caused to the subject cargo.

APPEARANCES OF COUNSEL

Quasha Ancheta Peña & Nolasco for petitioners.

Veralaw [Del Rosario Raboca Gonzales Grasparil] for respondent.

R E S O L U T I O N

REYES, *J.*:

This resolves the Motion for Reconsideration[1] of the Decision[2] dated November 26, 2014 of the Court in the above-captioned case filed by respondent Malayan Insurance Company, Incorporated (Malayan). Malayan alleges that in ruling in favor of Loadstar Shipping Company, Incorporated and Loadstar International Shipping Company, Incorporated (petitioners), the Court disregarded the conclusion of the Court of Appeals that the petitioners acted as a common carrier; that there was

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[1] *Rollo*, pp. 586-597.

[2] *Id*. at 573-584.

a breach of the contract of affreightment; and that the petitioners failed to produce evidence of a calamity to be exculpated from liability.[3]

In their Comment,[4] the petitioners contend that the grounds raised by Malayan are no longer relevant because as found by the Court, Malayan did not adduce proof of pecuniary loss to the insured Philippine Associated Smelting and Refining Corporation (PASAR).[5] PASAR has not established by an iota of evidence the amount of loss or actual damage it suffered by reason of seawater wettage of the 777.29 metric tons of copper concentrates. In spite of no proof of loss, Malayan, with seeming hastiness paid the claim of PASAR in the amount of ₱33,934,948.75.[6] According to the petitioners, Malayan cannot make them answerable for its mistake in indemnifying PASAR.[7]

On June 10, 2015, Malayan filed a Motion to Refer the Case to the Court *en banc*[8] alleging that the Decision dated November 26, 2014 of the Third Division deviated from the doctrine enunciated in *Delsan Transport Lines, Inc., v. CA*.[9] Malayan contends that in *Delsan*, the Court held that upon payment by the insurance company of the insurance claim, the insurance company should be subrogated to the rights of the insured; it is not even necessary to present the insurance policy because subrogation is a matter of equity.[10]

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[3] *Id*. at 587-588.

[4] *Id*. at 607-615.

[5] *Id.* at 609.

[6] The amount of ₱32,351,102.32 was indicated in the petitioners' Comment (*id*. at 611). However, Malayan paid PASAR the total amount of ₱33,934,948.75; *id.* at 213

[7] *Id.* at 611.

[8] *Id*. at 616-622.

[9] 420 Phil. 824 (2001).

[10] *Rollo*, p. 617.

Ruling of the Court

The Court shall resolve the issues *seriatim.*

Delsan involved the sinking of a vessel which took down with it the entire cargo of fuel it was carrying. Hence, the fact of total loss was completely and undisputedly established. The burden of proof was upon the common carrier to prove that it was not liable for the loss, which it failed to discharge. It was only but logical for the Court to hold the common carrier liable to the insurance company that paid the insured owner of the lost cargo as the latter's subrogee.

In comparison with *Delsan*, the facts of the instant case are not as straightforward. Here, the copper concentrates were delivered by the petitioners to the consignee PASAR although part thereof was contaminated with seawater. To be clear, PASAR did not simply reject the contaminated goods (on the basis that these were no longer fit for the intended purpose), claim the value thereof from Malayan and leave things at that — it bought back the goods which it had already rejected. Meanwhile, Malayan opted to cash in the situation by selling the contaminated copper concentrates to the very same consignee who already rejected the goods as total loss. After denying the petitioners of opportunity to participate in the disposal or sale of the goods,[11] Malayan sought to recover the total value of the wet copper concentrates from them. Malayan and PASAR's extraneous actuations are inconsistent with the alleged fact of total loss. Verily, *Delsan* cannot be applied given the contradistinctive circumstances obtaining in this case.

Next, Malayan argues that since the petitioners and PASAR agreed in their Contract of Affreightment that copper concentrates are easily contaminated with seawater, the contaminated parts should be considered as totally damaged;[12] and that when the petitioners failed to provide a seaworthy ship under 25 years of age as agreed upon, they should be held liable for damages.[13]

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[11] *Id.* at 241-242.

[12] *Id.* at 590.

[13] *Id.* at 592.

Again, the Court declares that it is iniquitous to consider the value of the contaminated copper concentrates as the amount of damages sustained by PASAR when there is no evidence to that effect. Notably, PASAR and Malayan were even able to come up and agree on a residual value. Needless to say, the mere fact that there was a residual value negates the verity of total loss sustained by PASAR. It is also inequitable to consider the purchase price of US$90,000.00 as the actual residual value of the copper concentrates since there is no showing that PASAR and Malayan objectively arrived at this amount. There is no explanation why Article 364 of the Code of Commerce which calls for the valuation of experts was not observed by Malayan and PASAR in fixing the residual value of the copper concentrates.

Neither can Malayan anchor its claim on the Evaluation Report presented by Elite Adjustors and Surveyors, Inc., assessing the loss as total in the amount of ₱32,351,102.32. Verily, Malayan paid PASAR using the said Evaluation Report as its basis, but ironically disputed this very same report in fixing a residual value with PASAR. True, if the subject copper concentrates were indeed not contaminated, Malayan and PASAR would not have fixed the residual value at only US$90,000.00. However, it does not escape the Court's notice that this price was derived through the exclusion of the petitioners in the valuation and sale of the wet copper concentrates, despite their manifestation of willingness to participate thereto.

At the pain of being repetitive, the Court reiterates the principle that actual damages are not presumed; it cannot be anchored on mere surmises, speculations or conjectures.[14] As the Court discussed in the Decision dated November 26, 2014, Malayan was not able to prove the pecuniary loss suffered by PASAR for which the latter was indemnified. This is in line with the principle that a subrogee steps into the shoes of the insured and can recover only if the insured likewise could have recovered.[15]

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[14] *Id*. at 582.

[15] *Lorenzo Shipping Corp. v. Chubb and Sons, Inc*., 475 Phil. 169, 182 (2004).

Nonetheless, the Court notes that the petitioners failed to comply with some of the terms of their contract of affreightment with PASAR. It was stipulated that the vessel to be used must not exceed 25 years of age, yet the vessel, MV Bobcat, was more than that age when the subject copper concentrates were transported. Additionally, the petitioners failed to keep the cargo holds and hatches of MV Bobcat clean and fully secured as agreed upon, which resulted in the wettage of the cargo.

As common carriers, the petitioners are bound to observe *extraordinary* diligence in their vigilance over the goods they transport, as required by the nature of their business and for reasons of public policy.[16] "Extraordinary diligence is that extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property or rights."[17] When the copper concentrates delivered were contaminated with seawater, the petitioners have failed to exercise extraordinary diligence in the carriage thereof.

In view of the foregoing, the Court deems it proper to award nominal damages to Malayan. This is in recognition of the breach of contract committed by the petitioners. "So long as there is a violation of the right of the plaintiff—whether based on law, contract or other sources of obligations—an award of nominal damages is proper."[18] Articles 2221 and 2222 of the Civil Code provide:

> Article 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

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[16] *Lea Mer Industries, Inc. v. Malayan Insurance Co., Inc.*, 508 Phil. 656, 664 (2005).

[17] *National Trucking and Forwarding Corp. v. Lorenzo Shipping Corp.*, 491 Phil. 151, 156 (2005).

[18] *Pryce Properties Corporation v. Spouses Sotore Octobre, Jr. and Henrissa A. Octobre and China Banking Corporation*, G.R. No. 186976, December 7, 2016. (Citations omitted)

Article 2222. The court may award nominal damages in every obligation arising from any source enumerated in Article 1157, or in every case where any property right has been invaded.

"Nominal damages are recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown."[19] "The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances."[20] To the mind of the Court, the amount of ₱1,769,374.725, which is equivalent to six percent (6%) of the sum being claimed by Malayan less the residual value of the copper concentrates, is sufficient as damages. Thus, the amount of nominal damages is computed as follows:

	₱33,934,948.75	(amount claimed by Malayan)
Less	₱ 4,445,370.00	(US$90,000 residual value x 49.393[21])
	₱29,489,578.75	
	x 6%	
	₱1,769,374.725	

Finally, the Court also takes the opportunity to make it clear that this disposition does not in any way undermine the principle of subrogation; rather, the Court takes into consideration all the circumstances in this case, inasmuch as Malayan and PASAR's dealings post-delivery of the copper concentrates were unwarranted. While the breach of contract committed by the petitioners should not be tolerated, the undue haste, as well as the other doubtful circumstances under which the sale of the wet copper concentrates was made, is not lost on the Court.

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[19] *Cathay Pacific Airways v. Reyes, et al.*, 712 Phil. 398, 418 (2013).

[20] *Savellano v. Northwest Airlines*, 453 Phil. 342, 360 (2003).

[21] Exchange rate of US Dollar to Philippine Peso as of November 29, 2000 (when the sale was made, *rollo*, p. 78) based on the Bangko Sentral ng Pilipinas Treasury Department Reference Exchange Rate Bulletin < http://www.bsp.gov.ph/dbank_reports/ExchangeRates_2rpt.asp?freq=D&datefrom=11%2F29%2F2000 > visited last March 13, 2017.

WHEREFORE, the motion for reconsideration is **PARTLY GRANTED**. The Decision dated November 26, 2014 of the Court is hereby **MODIFIED** in that nominal damages in the amount of ₱1,769,374.725 is awarded to Malayan Insurance Company, Incorporated, with legal interest at the rate of six percent (6%) *per annum* from the finality of this Resolution until fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), Jardeleza, and *Caguioa, JJ.*, concur.

Peralta, J., see concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

PERALTA, *J.*:

Respondent has filed the instant Motion for Reconsideration of the Decision dated November 26, 2014, granting the petition, on the following grounds, to wit:

> The conclusion of the Court of Appeals that Petitioners Loadstar was acting as a common carrier has been ignored
>
> The factual finding of the Court of Appeals that there was a breach of the Contract of Affreightment was ignored.
>
> The factual finding of the Court of Appeals that Petitioners Loadstar failed to produce evidence of a calamity was ignored.[1]

In essence, respondent posits the view that petitioners should be made liable to pay it (*respondent*) the actual damages it seeks to recover as subrogee to the rights of the insured, PASAR.

With due respect to the majority, it is my considered view that the Court should take a more prudent look at the facts and circumstances obtaining herein and grant the instant Motion for Reconsideration.

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[1] *Rollo*, pp. 587-588.

The ponencia found that: (1) the amount of ₱32,351,102.32 paid by respondent to PASAR covers the latter's claim for damages to the cargo and that based on the computation of Elite Adjustors and Surveyors; (2) the sum of ₱32,315,312.32 represents damages for the total loss of that portion of the cargo, equivalent to 777.290 wet metric tons, or 696.336 dry metric tons, which were contaminated with seawater and not merely the depreciation in its value; (3) after claiming damages for the total loss of that portion, PASAR bought back the contaminated copper concentrates from respondent at the price of US$90,000.00. The ponencia proceeds to hold that the fact of repurchase is enough to conclude that the contamination of the copper concentrates cannot be considered as total loss on the part of PASAR, and that there was no sufficient proof of the actual amount of loss to PASAR for which it was indemnified by respondent. Thus, the ponencia concludes that respondent, as subrogee to the rights of PASAR, is not entitled to the amount of actual damages it claims.

I beg to differ.

While it is true that the contamination of the copper concentrates cannot be considered as total loss on the part of PASAR, this does not exclude the fact that the subject cargo obtained damage. On the contrary, the copper concentrates, in fact, obtained damage and that the only remaining value which was salvaged from the contaminated portion amounted only to US$90,000.00. This is precisely the reason why from the insured value of ₱32,315,312.32, as computed by Elite, PASAR only paid US$90,000.00 when it bought back the contaminated copper concentrates from respondent. In the same vein, this is also the reason why the CA subtracted US$90,000.00, which it considered as the residual value of the contaminated copper concentrates, from the amount of ₱33,934,948.74 which respondent seeks to recover from petitioner.

As held by the ponencia, "**[i]t is not disputed that the copper concentrates carried by M/V Bobcat from Poro Point, La Union to Isabel, Leyte were indeed contaminated with seawater.** The issue lies on whether such contamination resulted

to damage, and the costs thereof, if any, incurred by the insured PASAR."[2]

The ponencia holds that respondent failed to prove that the subject copper concentrates are rendered useless or unfit for the purpose intended by PASAR due to contamination with seawater. However, logic dictates that if the contaminated copper concentrates indeed retained their usability and did not greatly diminish in value, why should respondent agree to pay its insured value and to subsequently sell the same to PASAR only for a relatively small amount of US$90,000.00 (which was roughly equivalent to ₱4,500,000.00)[3] when its insured value amounted to more than ₱32,000,000.00. This only shows that the subject copper concentrates were greatly damaged and there was considerable depreciation in their value.

The question, then, is who will bear the burden of such loss or diminution in value. I submit that the CA did not err in ruling that petitioners should bear the burden of such loss and pay respondent the actual damages it seeks to recover, subject to adjustment as determined by the appellate court.

Petitioners are common carriers. Common carriers are defined, under Article 1732 of the Civil Code, as persons, corporations, firms, or associations engaged in the business of carrying or transporting passenger or goods, or both by land, water or air for compensation, offering their services to the public. As such, they are mandated from the nature of their business and for reasons of public policy, to observe the extraordinary diligence in the vigilance over the goods transported by them according to all the circumstances of such case, as required by Article 1733 of the same Code. Furthermore, Article 1735 of the Civil Code provides that, in all cases other than those mentioned under Article 1734 thereof, if the goods are lost destroyed or deteriorated, common carriers are presumed to have been at

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[2] Emphasis supplied.

[3] Based on the records of the Bangko Sentral ng Pilipinas, the monthly average Philippine Peso exchange rate for US$1 in November 2000 was ₱49.7537. Thus, in November 2000, US$90,000.00 was equivalent only to ₱4,477,833.

fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required in Article 1733. There being no dispute that the subject cargo sustained damage, the presumption is that it was caused by reason of petitioners' negligence. Thus, it is incumbent upon petitioners to prove that they exercised extraordinary diligence in the vigilance over such goods it contracted for carriage. As held by the CA, petitioners failed in this regard. Thus, the CA held that:

> In this case, the lower court found that the crack that caused seawater to seep into the cargo hold – in turn contaminating part of the cargo of copper concentrates – was caused by a "natural disaster or calamity that wrecked [the] Bobcat while on its way to Isabel, Leyte." However, the record is bereft of any showing that [herein petitioners] were able to prove that a natural disaster occurred while the vessel was *en route* to its destination save for the allegation that MV "Bobcat" encountered "very heavy weather." None of the crew was presented by [petitioners] during the trial of the case and no witness testified that there was a storm or other calamity which could exculpate [petitioners] from liability. Therefore, under the law, MV "Bobcat" was unseaworthy at the time she undertook the voyage on September 10, 2000.[4]

As to petitioners' breach of its Contract of Affreightment with respondent, it is submitted that the CA also correctly held that:

> x x x [petitioners] were well aware that the cargo of copper concentrates was easily contaminated by seawater, as Item II of the Contract of Affreightment ("NATURE AND QUANTITY OF CARGO") provides:
>
> 3. Copper concentrates are easily contaminated by seawater. Loadstar shall ensure that cargo holds and hatches are clean, fully secured and devoid of contamination prior to loading.
>
> [Respondent] further argues that [petitioners] also violated Item III [4] of the Contract of Affreightment, which provides for a limitation in the age of the vessel to be assigned to PASAR. Under said provision, the vessel "must not exceed fifteen (15) years of age unless the vessel

[4] *Rollo,* p. 19.

has maintained seaworthiness... but in no case to exceed 25 years of age." At the time the incident occurred, MV "Bobcat" was already 30 years of age, and thus, [petitioners] breached the aforementioned provisions.[5]

Under Article 1170 of the Civil Code, those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages. In explaining the import of this provision, this Court in *Spouses Guanio v. Makati Shangri-La Hotel and Resort, Inc.*,[6] held that:

> In *culpa contractual* x x x the mere proof of the existence of the contract and the failure of its compliance justify, *prima facie*, a corresponding right of relief. The law, recognizing the obligatory force of contracts, will not permit a party to be set free from liability for any kind of misperformance of the contractual undertaking or a contravention of the tenor thereof. A breach upon the contract confers upon the injured party a valid cause for recovering that which may have been lost or suffered. The remedy serves to preserve the interests of the promissee that may include his **expectation interest**, which is his interest in having the benefit of his bargain by being put in. as good a position as he would have been in had the contract been performed, or his **reliance interest**, which is his interest in being reimbursed for loss caused by reliance on the contract by being put in as good a position as he would have been in had the contract not been made; or his *restitution interest*, which is his interest in having restored to him any benefit that he has conferred on the other party. Indeed, agreements can accomplish little, either for their makers or for society, unless they are made the basis for action. The effect of every infraction is to create a new duty, that is, to make RECOMPENSE to the one who has been injured by the failure of another to observe his contractual obligation unless he can show extenuating circumstances, like **proof of his exercise of due diligence** x x x or of the **attendance of fortuitous event**, to excuse him from his ensuing liability, (emphasis and underscoring in the original; capitalization supplied)[7]

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[5] *Id*. at 19-20.

[6] 656 Phil. 608 (2011).

[7] *Guanio v. Makati Shangri-La Hotel and Resort, Inc., supra*, at 615, citing *RCPI v. Verchez, et al.*, 516 Phil. 725, 735 (2006).

Thus, Article 2201 of the Civil Code provides that:

> In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.
>
> In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.

In the present case, I concur with the majority in finding that petitioners failed to exercise extraordinary diligence in the vigilance over the goods they contracted for carriage. Indeed, petitioners' wanton attitude was shown by the fact that they deployed a clearly over-aged ship and that they failed to make sure that the ship's hatches were watertight or properly secured during voyage. The resulting contamination and the subsequent rejection of the subject copper concentrates can be reasonably attributed to petitioners' non-performance of their obligation to observe extraordinary diligence over the goods they are transporting. In other words, they are guilty of breach of their contract of affreightment with PASAR. Thus, petitioners should be made liable, not only for nominal damages as ruled upon by the majority, but for the entire damage caused to the subject cargo.

Lastly, in regard to petitioners' liability for actual damages, the ponencia's ruling is anchored on the argument that respondent failed to present evidence to prove that the contamination resulted in actual damage to the cargo and the cost of such damage, if any.

I take exception to the above ruling.

In the case of *Insurance Company of North America v. Asian Terminals, Inc.*,[8] this Court, in computing the amount of actual damages due to the petitioner insurance company in the said case, relied on the Evaluation Report of the independent adjuster engaged by the said insurance company. In the instant case, it

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[8] 682 Phil. 213 (2012).

is well to note that part of the evidence presented by respondent is the final adjustment report dated November 16, 2000, made by Elite Adjusters and Surveyors, Inc. (Elite), an independent company engaged by respondent to assess the damage caused to the subject cargo and the possible consequent liability of respondent as the insurer. In the said report, which was addressed to respondent, Elite found that 777.29 wet metric tons, or 696.336 dry metric tons, had high chlorine and moisture content. Thus, Elite made the following findings and conclusions:

> **Compensability Aspect.** We are satisfied from our own investigation of the claim that the total quantity of 777.290 Wet Metric Tons equivalent to 696.336 dry metric tons were damaged due to contamination and wetting with sea water, occurring during the voyage from Poro Point to Isabel, Leyte, or perils insured under the policy. We believe therefore that the claim is compensable, subject to adjustment.
>
> x x x x x x x x x
>
> **Recommendation.** Subject to your agreement with and approval of our findings and adjustment, payment to assured of the amount of ₱32,351,102.32 as adjusted is hereby recommended.
>
> **SALVAGE**
>
> As of the present, we doubt that there is any salvage value on the damaged cargo as we are not aware of anyone interested in purchasing the same or of any use thereof.[9]

As earlier mentioned, respondent agreed to pay PASAR the insured value of the contaminated or damaged copper concentrates on the basis of the abovequoted findings. Again, why should respondent agree to pay ₱32,351,102.32 if such report is not a competent evidence of such damage? Thus, it is my considered view that the above findings of the independent adjuster is a competent and sufficient evidence of the value of the actual damage sustained by the subject cargo of copper concentrates.

Accordingly, I vote to **GRANT** the Motion for Reconsideration.

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[9] *Rollo*, pp. 434-435. (Emphasis in the original)

THIRD DIVISION

[G.R. No. 205279. April 26, 2017]

VISAYAS GEOTHERMAL POWER COMPANY, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); REFUNDS OR TAX CREDITS OF INPUT TAX; 120+30-DAY PERIODS; EXCEPTION.— In a line of cases, the Court has underscored the need to strictly comply with the 120+30-day periods provided in Section 112 of the 1997 NIRC, which reads: Sec. 112. *Refunds or Tax Credits of Input Tax*. - (A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter** when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales x x x. x x x x (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. - In proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsection (A) hereof. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim** with the Court of Tax Appeals. x x x [But, as] the petitioner correctly pointed out, this general rule that calls for a strict compliance with the 120+30-day mandatory periods admits of an exception. The Court has declared, in *San Roque*: [S]trict compliance with the 120+30[-]day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, **except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October**

> **2010 when the *Aichi* doctrine was adopted**, which again reinstated the 120+30[-]day periods as mandatory and jurisdictional. x x x BIR Ruling No. DA-489-03 *expressly* states that the "**taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.**" Prior to this ruling, the BIR held x x x that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed. All taxpayers can rely on it from the time of its issuance on December 10, 2003 up to its reversal by the Court in *CIR v. Aichi Forging Company of Asia, Inc*. on October 6, 2010, where this Court held that the 120+30-day periods are mandatory and jurisdictional.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
Office of the Solicitor General for respondent.

R E S O L U T I O N

REYES, *J.*:

Subjects of this Petition for Review on *Certiorari*[1] are the Decision[2] dated October 8, 2012 and Resolution[3] dated January 7, 2013 of the Court of Tax Appeals (CTA) *en banc* in CTA EB Case No. 864. The CTA *en banc* affirmed *via* the challenged issuances the CTA First Division's dismissal of Visayas Geothermal Power Company's (petitioner) petition for review on the ground of premature filing.

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[1] *Rollo*, pp. 44-79.

[2] Penned by Associate Justice Caesar A. Casanova, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Olga Palanca-Enriquez and Cielito N. Mindaro-Gulla concurring; Presiding Justice Ernesto D. Acosta with Concurring and Dissenting Opinion concurred in by Associate Justice Esperanza R. Fabon-Victorino; Associate Justice Lovell R. Bautista with Separate Dissenting Opinion; and Associate Justice Amelia R. Cotangco-Manalastas on leave; *id.* at 95-110.

[3] *Id*. at 112-115.

The Antecedents

The petitioner is a special purpose limited partnership established primarily to "invest in, acquire, finance, complete, construct, develop, improve, operate, maintain and hold that certain partially constructed power production geothermal electrical generating facility in Malitbog, Leyte Province, Philippines (the "Project"), and other property incidental thereto, for the production and sale of electricity from geothermal resources, to sell or otherwise dispose of the Project and such other property."[4] It is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer with Taxpayer Identification No. 003-832-538-000.[5]

On February 13, 2009, the petitioner filed with the BIR an administrative claim for refund of unutilized input VAT covering the taxable year 2007 in the amount of ₱11,902,576.07. On March 30, 2009, it proceeded to immediately file a petition for review with the CTA, as it claimed that the BIR failed to act upon the claim for refund.[6]

Proceedings ensued before the CTA. To substantiate its claim for refund, the petitioner cited, among other laws, Section 6 of Republic Act (R.A.) No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001," which provides in part that "[p]ursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be [VAT] zero-rated." It also referred to the 1997 National Internal Revenue Code (NIRC), as amended by R.A. No. 9337, which imposes a zero percent VAT rate on sale of power generated through renewable sources of energy.[7]

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[4] *Id*. at 96.

[5] *Id*.

[6] *Id*. at 97.

[7] *Id*. at 101.

Ruling of the CTA Division

On October 19, 2011, the CTA First Division rendered its Decision,[8] with dispositive portion that reads:

WHEREFORE, the instant Petition for Review is hereby **DENIED** for being prematurely filed.

SO ORDERED.[9]

Cited in the decision is Section 112(C) of the 1997 NIRC, which provides that the Commissioner of Internal Revenue (CIR) has 120 days within which to decide on an application for refund or tax credit, to be reckoned from the date of submission of complete documents in support of the application. Since the administrative claim for refund was filed on February 13, 2009, the CIR had until June 13, 2009 within which to act on the claim. The petition for review, however, was prematurely filed on March 30, 2009, or a mere 45 days from the filing of the administrative claim with the BIR. The dismissal of the case was based solely on this ground, as the tax court found it needless to still address the petitioner's compliance with the requisites for entitlement to tax refund or credit.[10]

The petitioner moved to reconsider,[11] as it explained that it no longer waited for the CIR's action on the administrative claim to be able to still satisfy the two-year prescriptive period for filing a judicial claim for tax refund. The petitioner's motion for reconsideration was still denied by the CTA First Division *via* a Resolution[12] dated January 16, 2012, prompting the petitioner to elevate the case to the CTA *en banc*.

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[8] Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy concurring; *id*. at 160-178.

[9] *Id*. at 178.

[10] *Id*. at 175-178.

[11] *Id*. at 179-220.

[12] *Id*. at 233-240.

The CTA *en banc*, in its Decision[13] dated October 8, 2012, affirmed *in toto* the rulings of the CTA First Division. It stated, thus:

> In the case at bench, the CTA First Division is correct in its findings that petitioner's administrative claim for refund/credit of its unutilized input VAT was timely filed on February 13, 2009. Applying subsections (A) and (C) of Section 112 of the 1997 NIRC, as amended, the [CIR] has one hundred twenty (120) days or until June 13, 2009 to act on the said application. However, as can be gleaned from the records, its judicial claim was prematurely filed on March 30, 2009 or barely forty- five (45) days after it filed its application for refund with the [BIR]. For this reason, applying the ruling in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi case)*, this Court acquires no jurisdiction to act on the said claim in view of the premature filing of the instant Petition for Review.
>
> x x x x x x x x x
>
> **WHEREFORE**, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the October 19, 2011 Decision and the January 16, 2012 Resolution of the CTA First Division in CTA Case No. 7889 entitled, "*Visayas Geothermal Power Company vs. Commissioner of Internal Revenue,*" are hereby **AFFIRMED *in toto*.**
>
> **SO ORDERED.**[14] (Citation omitted)

Hence, this petition for review on *certiorari.*

The Present Petition

The petitioner asks the Court to, *first*, reverse the rulings of the CTA *en banc* and, *second*, to order the CIR to grant the refund or tax credit certificate being applied for.[15]

The petitioner insists that when it sought an immediate recourse to the CTA without waiting for the decision of the CIR in the administrative claim, it merely relied on the guidelines that

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[13] *Id.* at 95-110.

[14] *Id.* at 107-108.

[15] *Id.* at 74.

were set forth in BIR Ruling No. DA-489-03, which provides that a taxpayer-claimant need not wait for the lapse of the 120-day period before seeking judicial relief. The petitioner also cites the Court's ruling in *CIR v. San Roque Power Corporation*,[16] which recognized the effects of a taxpayer's reliance on the said BIR ruling.

The CIR, on the other hand, maintains that the petition for review filed with the CTA was prematurely filed, as the petitioner still had to wait for the lapse of the 120-day period allowed for the resolution of its administrative claim.

Ruling of the Court

The petition is partly granted. The CTA erred in ruling that the petitioner's judicial claim was prematurely filed. However, considering that the tax court had not made a disposition on the merits of the claim for tax refund, the case needs to be remanded to the CTA First Division, so that it may decide on the issue.

120+30-Day Periods; Exception

In a line of cases,[17] the Court has underscored the need to strictly comply with the 120+30-day periods provided in Section 112 of the 1997 NIRC, which reads:

Sec. 112. *Refunds or Tax Credits of Input Tax*. –

(A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, *within two (2) years after the close of the taxable quarter* when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales x x x.

x x x x x x x x x

[16] 703 Phil. 310 (2013).

[17] *CIR v. Mirant Pagbilao Corporation (now Team Energy Corporation)*, G.R. No. 180434, January 20, 2016, 781 SCRA 364; *CIR v. Aichi Forging Company of Asia, Inc*., G.R. No. 183421, October 22, 2014, 739 SCRA 91; *Team Energy Corporation v. CIR*, 724 Phil. 127 (2014).

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. – In proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim** with the Court of Tax Appeals.

x x x x x x x x x
(Emphasis ours)

The Court ruled in *San Roque*[18] that "[f]ailure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition."[19] "The old rule that the taxpayer may file the judicial claim, without waiting for the [CIR's] decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period."[20] With the current rule that gives a taxpayer 30 days to file the judicial claim even if the CIR fails to act within the 120-day period, the remedy of a judicial claim for refund or credit is always available to a taxpayer.[21]

As the petitioner correctly pointed out, this general rule that calls for a strict compliance with the 120+30-day mandatory

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[18] *Supra* note 16.

[19] *Id*. at 354.

[20] *Id*. at 370.

[21] *Id*. at 370-371.

periods admits of an exception. The Court has declared, also in *San Roque*:

> [S]trict compliance with the 120+30[-]day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, **except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted**, which again reinstated the 120+30[-]day periods as mandatory and jurisdictional.[22] (Emphasis ours)

The BIR Ruling No. DA-489-03 referred to in the exception was recognized by the Court to be a general interpretative rule applicable to all taxpayers, as it was a response to a query made, not by a particular taxpayer but by a government agency[23] tasked with processing tax refunds and credits.[24]

VI. **BIR Ruling No. DA-489-03 dated 10 December 2003**

> BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 *expressly* states that the "**taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.**" Prior to this ruling, the BIR held x x x that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.[25] (Emphasis ours)

All taxpayers can rely on it from the time of its issuance on December 10, 2003 up to its reversal by the Court in *CIR v. Aichi Forging Company of Asia, Inc*.[26] on October 6, 2010, where this Court held that the 120+30-day periods are mandatory and jurisdictional.[27]

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[22] *Id*. at 371.

[23] One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance.

[24] *CIR v. San Roque Power Corporation*, *supra* note 16, at 376.

[25] *Id*. at 372-373.

[26] G.R. No. 183421, October 22, 2014, 739 SCRA 91.

[27] *CIR v. San Roque Power Corporation*, *supra* note 16, at 376.

It is material that both administrative and judicial claims in the present case were filed by the petitioner in 2009. The CTA *en banc*'s reliance on the general rule enunciated by the Court in *San Roque* is misplaced. Notwithstanding the fact that the petitioner failed to wait for the expiration of the 120-day mandatory period, the CTA could still take cognizance of the petition for review.[28]

Entitlement to Tax Refund

In its Decision dated October 19, 2011, the CTA First Division recognized that the petitioner's entitlement to tax refund required proof of satisfaction of the following requisites:

1. that there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.[29]

The foregoing matters call for factual findings, which are not for the Court to now determine. Given the Court's ruling that the CTA should have taken cognizance of the petitioner's claim, the Court finds it necessary to remand the case to the CTA, which shall determine and rule on the entitlement of the petitioner to the claimed tax refund. Notwithstanding the fact that the CTA First Division allowed the parties' presentation of evidence, it opted not to rule on the presence or absence of the foregoing requisites, except for the fifth requisite, and instead decided to dismiss the petition on the ground that the case was prematurely filed. Even the CTA *en banc* affirmed the dismissal on the same sole ground.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated October 8, 2012 and Resolution dated January 7,

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[28] *See* also *Team Energy Corporation v. CIR*, 724 Phil. 127 (2014).

[29] *Rollo*, pp. 172-173.

2013 of the Court of Tax Appeals *en banc* in CTA EB Case No. 864 are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Court of Tax Appeals, which is **DIRECTED** to determine petitioner Visayas Geothermal Power Company's entitlement to a tax refund.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta,[*] *Bersamin*, and *Tijam, JJ.*, concur.

SECOND DIVISION

[G.R. No. 206168. April 26, 2017]

REPUBLIC OF THE PHILIPPINES, represented by RAWAN POINT ELEMENTARY SCHOOL, *petitioner, vs.* **SPOUSES DOLORES AND ABE LASMARIAS; and COOPERATIVE BANK OF LANAO DEL NORTE, represented by the Branch Manager, LAARNI ZALSOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED IN A PETITION FOR REVIEW UNDER RULE 45; EXCEPTIONS.— A petition for review filed under Rule 45 may raise only questions of law. The factual findings by the Court of Appeals, when supported by substantial evidence, are generally conclusive and binding on the parties and are no longer reviewable unless the case falls under the recognized exceptions. This Court is not a trier of facts and we are not duty bound to re-examine evidence.

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[*] Additional member per Raffle dated April 26, 2017 vice Associate Justice Francis H. Jardeleza.

The existence or non-existence of fraud in an application for free patent depends on a finding of fact insofar as the presence of its requirements. However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded and this case falls under one of those exceptions. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

2. **POLITICAL LAW; THE PUBLIC LAND ACT (CA NO. 141); FREE PATENT APPLICATION; REQUISITE; THAT THE APPLICANT, SINCE 4 JULY 1945 OR PRIOR THERETO, HAS CONTINUOUSLY OCCUPIED AND CULTIVATED THE SUBJECT LAND; NOT PRESENT IN CASE AT BAR.—** Anent Solijon's free patent application, the said application was in 1984 and was granted two years later, in 1986. The uncontested facts, however, is that the school building had been in existence since 1950 and the school had been in operation since 1955 as proven by the school records submitted by petitioner to the RTC that go back as early as 1955, clearly indicating that Solijon was not in exclusive possession of Lot No. 1991-A-1 when she applied for the free patent in 1984. Under paragraph 1, Section 44, Chapter VII of Commonwealth Act No. 141, as amended by Republic Act No. 782, the free patent applicant: (1) has to be a natural born citizen of the Philippines who is not the owner of more than twenty-four hectares; and (2) since 4 July 1945 or prior thereto, **has continuously occupied and cultivated**, whether by himself or his predecessor-in-interest, a tract of or tracts of public

agricultural lands subject to disposition not exceeding 24 hectares. Moreover, the application must be accompanied by a map and the technical description of the land occupied, along with affidavits **proving his occupancy** from two disinterested persons residing in the municipality or barrio where the land may be located. The facts of the case showed that the school's occupation of the contested portion of Lot No. 1991-A-1 preceded Solijon's free patent application in 1984 by 34 years. As such, Solijon could not have continuously occupied and cultivated by herself or through her predecessors-in-interests the contested 8,675 square meters of land prior to her application for free patent because there is an existing school on the area. To bolster the school's prior occupation of the subject land, the relocation survey ordered by the RTC showed that no house of Solijon was found within the same area.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Florencio B. Opay for respondents.

D E C I S I O N

PERALTA, *J.*:

For resolution of this Court is the Petition for Review on *Certiorari* under Rule 45 dated April 25, 2013 of petitioner Republic of the Philippines, represented by Raw-An Point Elementary School that seeks to reverse and set aside the Court of Appeals' (*CA*) Decision[1] dated March 1, 2013 that dismissed petitioner's appeal in CA-G.R. CV No. 01536-MIN and affirmed with modification the Decision[2] dated January 28, 2008 of Branch 7, Regional Trial Court, Tubod, Lanao del Norte in favor of respondents spouses Dolores and Abe Lasmarias in a

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[1] Penned by Associate Justice Henri Jean Paul B. Inting, with the concurrence of Associate Justices Edgardo T. Lloren and Jhosep Y. Lopez concurring; *rollo*, pp. 32-44.

[2] Penned by Presiding Judge Alan L. Flores; *id.* at 67-91.

case for recovery of possession filed by the same respondents against herein petitioner.

The facts, as found by the RTC and the CA, follow.

Respondents, spouses Dolores and Abe Lasmarias, bought Lot No. 1991-A-1, Csd-12-000051 with an area of 4.8595 hectares including a fishpond located at Raw-An Point, Baroy, Lanao del Norte from Aida Solijon,[3] who executed a Deed of Sale of Registered Land dated May 6, 1991 signed by her husband, Nicanor Aguilar, Jr. and notarized before a Notary Public. The said lot was registered to Solijon per OCT No. P-8720 issued by virtue of Free Patent No. XII-2744, applied for by Solijon in 1984 and granted in 1986.

The sale was not registered or annotated on the OCT nor was the title transferred in respondents' names in order to avoid paying taxes.

In 1997 to 1999, respondents, through a Special Power of Attorney executed by Solijon, executed a Real Estate Mortgage on the disputed lot with the Cooperative Bank of Lanao del Norte, however, respondents failed to satisfy their obligation resulting to the foreclosure of the mortgaged property. The said mortgage was annotated on the OCT without a deed of sale attached. The last entry on the OCT is the sale executed by the sheriff in favor of the bank as the highest bidder. Accordingly, the respondents were given five (5) years to redeem the property.

In the meantime, a relocation survey was conducted on the disputed lot and Geodetic Engr. Rogelio Manoop, Jr. found that a portion of petitioner, Raw-An Point Elementary School, partly encroached on Lot 1991-A-1, Csd-12-000051. Respondents informed the school principal and they agreed to have another survey that resulted to the same findings. Thus, respondents sent a letter to vacate dated July 26, 2001 to the petitioner, but to no avail.

Respondents then, on September 13, 2001, filed a complaint for recovery of possession against the petitioner.

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[3] Also spelled "Solejon" in some parts of the records.

Respondents presented Engr. Manoop's sketch plan and Certification dated October 30, 2001 stating that a portion of the petitioner's structure containing an area of 7,700 sq. m., more or less, is within Lot 1991-A-1, Csd-12-000051. Respondents knew that petitioner, through the then Department of Education Culture and Sports (*DECS*), owns a lot in the same area donated to it by Necias Balatero through a Deed of Donation executed on January 14, 1992, however, respondents insisted that the lot donated is not the present school site but rather the lot adjacent thereto. Respondents further claimed that Nicanor Aguilar, Sr. previously donated a 1.179-hectare lot to the school, first in the early 1950s or 1960s and second in the early 1990s, but upon seeing the sketch, respondents saw that the present school site is also different from the one Nicanor Aguilar, Sr. donated.

The Cooperative Bank of Lanao del Norte intervened in the proceedings before the RTC claiming that it is the present registered owner of the subject lot under TCT No. T-23418 by virtue of the auction sale after the respondents failed to pay their loan secured by the property mortgaged. According to the bank, although the OCT presented to them was registered in Solijon's name, it allowed respondents to use it as security because the Special Power of Attorney executed by Solijon allowed respondents to mortgage the same property. The bank claimed good faith and prayed that it be declared the legitimate owner of the land and for petitioner to vacate the property.

Petitioner, on the other hand, insisted that the school building has been in existence on the subject lot since 1950 as supported by school records showing its operation as early as 1955. It, however, conceded that the lot donated to them by Necias Balatero is adjacent to the school but maintained that the donation was only in addition to the present school site. Petitioner also admitted that it has no title on the property where the school presently stands, but according to petitioner, considering the length of the school's existence thereon, it would have been improbable for another person to obtain title thereto, much less, a free patent. Petitioner further averred that respondents' action has already prescribed. It also argued that at the time Solijon

applied for a Free Patent, the lot was already occupied, thus, Solijon must have committed fraud and misrepresentation when she applied for a Free Patent which requires that the applicant must be in exclusive possession of the property. Such fraud and misrepresentation, therefore, according to petitioner, is enough to nullify the grant of patent and title in Solijon's name.

Thereafter, the RTC ordered for a relocation survey which was conducted on December 14, 2003 wherein it was found that the school actually occupied 8,675 sq. m. of Solijon's lot and that the lot in petitioner's name is located 12 meters away from the school compound, which is along the south portion of Solijon's property. However, no house of Solijon was found within the subject lot.

During his testimony, the Officer-in-Charge of the Community Environment and Natural Resources Office (*CENRO*), Kolambugan, Lanao del Norte, stated that the records, with respect to Solijon's patent application, were damaged by termites and could no longer be reproduced, however, their records officer attested that Solijon applied for a patent as recorded on their patent book.

Meanwhile, on July 19, 2006, 8,675 sq. m. of the subject lot was bought by respondents from the Cooperative Bank of Lanao del Norte.

In its Decision dated January 28, 2008, the RTC ruled in favor of the respondents and disposed of the case as follows:

> WHEREFORE, in the light of the foregoing, and by preponderance of evidence, judgment is rendered by the Court in favor of plaintiffs and against defendants, especially [the] Department of Education (DepEd), formerly known as Department of Education, Culture and Sports, to wit:
>
> 1) Ordering defendants, especially, DepEd (formerly DECS), to surrender to plaintiffs after the finality of the decision, the 2,760 Square Meters of 8,675 Square Meters, as per Exhs. "E-1" and "E-4," which they are in possession and usurped from them, out of the total area of 48,595 Square Meters, located at Raw-An Point, Baroy, Lanao del Norte (although it [is] still covered by OCT No. P-8720, in the name of Aida Solejon;

2) Ordering defendants, especially DepEd (formerly DECS), to remove school buildings and other structures, which they illegally constructed, and found in said portion (per paragraph No. 1 above), and to vacate the same, including the fishponds they are occupying, after the finality of the decision;

3) Ordering defendants, to pay jointly and solidarily, plaintiffs ₱70,000.00 actual damages, twice a year of ₱140,000.00 per year of harvest of bangus and shrimps out of the fishpond, which is part of Lot 1991-A-1 of plaintiffs, since the demand to vacate on July 26, 2001, until the finality of the decision of which they engaged themselves in proprietary undertakings; and attorney's fees of ₱20,000.00 and ₱1,000.00 per hearing. But no moral and exemplary damages are awarded, for being devoid of merit and consideration;

4) On Intervention by plaintiff-in-intervention, Cooperative Bank of Lanao del Norte, its rights over the property, subject to this case are respected, subject to the interests of plaintiffs, who had repurchase[d] the portion of Lot 1991-A-1 and covered by deposit to repurchase, and for the rest to be repurchased, if any, as admitted by its complaint-in-intervention, and the exhibits it offered;

5) Ordering the dismissal of the special/affirmative defenses and counterclaim of defendants;

6) Ordering defendants to pay the costs of the proceedings.

SO ORDERED.[4]

Petitioner filed its appeal with the CA, and on March 1, 2003, the latter court affirmed the RTC decision with modifications, thus:

WHEREFORE, the appeal is **DENIED**. The January [28], 2008 Decision of the Regional Trial Court, Branch 7, Tubod, Lanao del Norte, in Civil Case No. 07-524 is **AFFIRMED** with **MODIFICATIONS**. Defendant-appellant is **ORDERED** to vacate and surrender the 8,675 sq. m. lot included in OCT No. P-8720, to the plaintiff-intervenor-appellee Cooperative Bank of Lanao del Norte as registered owner thereof per TCT No. 23,418. The award for actual damages is **DELETED**.

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[4] *Id*. at 89-90.

SO ORDERED.[5]

Hence, the present petition.

The ground relied upon and the argument raised by petitioner are as follows:

GROUND RELIED UPON FOR THE ALLOWANCE OF THE PETITION

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN RENDERING ITS DECISION DATED MARCH 1, 2013 WHICH DISMISSED PETITIONER'S APPEAL IN CA-G.R. CV No. 01536-MIN

ARGUMENT

PETITIONER WAS ABLE TO PRESENT CLEAR AND CONVINCING EVIDENCE SHOWING THAT THE FREE PATENT OVER THE SUBJECT PROPERTY WAS PROCURED THROUGH FRAUD AND MISREPRESENTATION.[6]

Petitioner maintains that it was able to adduce clear and convincing evidence that Solijon employed fraud in procuring the patent. According to petitioner, the legal infirmity in Solijon's title lies on the fact that she did not disclose in her application for free patent filed with the Bureau of Lands in 1984 that a portion of the property subject of her application was already occupied and utilized by the Raw-An Point Elementary School since the 1950s. Petitioner, however, admits that the record containing Solijon's application for free patent could no longer be located as the same was allegedly destroyed and eaten by termites.

In their Comment dated May 26, 2014, respondents assert that the existence or non-existence of fraud and misrepresentation is a question of fact that can only be resolved by the trial court and the CA and that the remedy of petition for review under Rule 45 can only be availed of on the ground of pure questions of law.

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[5] *Id*. at 44. (Emphasis in the original)

[6] *Id*. at 15.

In its Reply dated September 9, 2014, petitioner contends that it raised a question of law because it seeks the review of the CA's application of the pertinent provisions of the Public Land Act and the existing jurisprudence in light of the evidence presented by the parties. Petitioner argues that the CA misapplied Sections 90 (g) and 91 of the Public Land Act relating to the requirement that an applicant for free patent must state under oath in his application that the land applied for is not occupied, improved or cultivated, either entirely or partially, by another.

The petition is meritorious.

A petition for review filed under Rule 45 may raise only questions of law. The factual findings by the Court of Appeals, when supported by substantial evidence, are generally conclusive and binding on the parties and are no longer reviewable unless the case falls under the recognized exceptions.[7] This Court is not a trier of facts and we are not duty bound to re-examine evidence.[8] The existence or non-existence of fraud in an application for free patent depends on a finding of fact insofar as the presence of its requirements.[9] However, these rules do admit exceptions.[10] Over time, the exceptions to these rules have expanded and this case falls under one of those exceptions. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:[11]

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond

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[7] *Medina v. Court of Appeals*, *et al.,* 693 Phil. 356, 366 (2012).

[8] *Id.*

[9] *Pedro Mendoza, et al. v. Reynosa Valte*, G.R. No. 172961, September 7, 2015.

[10] *Pascual v. Burgos,* G.R. No. 171722, January 11, 2016, 778 SCRA 189, 205.

[11] 269 Phil. 225 (1990) [Per *J.* Bidin, Third Division].

the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[12]

While the RTC and the CA in this case are similar in their factual findings, there appears to be no substantial evidence to prove that Solijon did not commit fraud or misrepresentation in her application for free patent. It must be remembered that petitioner was not able to prove the existence of fraud because the records of Solijon's patent application were damaged by termites and could no longer be reproduced, as testified to by the Officer-in-Charge of the CENRO, Kolambugan, Lanao del Norte. This, however, does not mean that no fraud actually exists. It only means that Solijon's free patent application was not presented before the RTC. Furthermore, it is also erroneous to conclude that if Solijon's free patent was obtained through fraud, it necessarily follows that Balatero's free patent was, likewise, obtained through fraud. Nothing in the records would show that the parties presented Balatero's free patent application or that any party alleged that he committed fraud or misrepresentation by claiming that the land he applied for was unoccupied. If at all, the fact that Balatero donated a portion of the land he applied for to the school could mean that he recognized the existence of an occupant and a previously constructed school building on the land, or that his application was made subject to the school's occupation of a portion of the land he applied for. In addition, the RTC noted that petitioner did not give Solijon a day in court either by filing a third-party complaint or by including her as defendant-in-intervention. Yet, the RTC made a conclusion against Balatero's free patent application although he was also not a party to the case.

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[12] *Medina v. Mayor Asistio, Jr., supra* at 232.

Anent Solijon's free patent application, the said application was in 1984 and was granted two years later, in 1986. The uncontested facts, however, is that the school building had been in existence since 1950 and the school had been in operation since 1955 as proven by the school records submitted by petitioner to the RTC that go back as early as 1955, clearly indicating that Solijon was not in exclusive possession of Lot No. 1991-A-1 when she applied for the free patent in 1984. Under paragraph 1, Section 44, Chapter VII of Commonwealth Act No. 141,[13] as amended by Republic Act No. 782,[14] the free patent applicant: (1) has to be a natural born citizen of the Philippines who is not the owner of more than twenty-four hectares; and (2) since 4 July 1945 or prior thereto, **has continuously occupied and cultivated**, whether by himself or his predecessor-in-interest, a tract of or tracts of public agricultural lands subject to disposition not exceeding 24 hectares. Moreover, the application must be accompanied by a map and the technical description of the land occupied, along with affidavits **proving his occupancy** from two disinterested persons residing in the municipality or barrio where the land may be

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[13] Section 44. Any natural-born citizen of the Philippines who is not the owner of more than twenty-four hectares and who since July fourth, nineteen hundred and twenty-six or prior thereto, has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of agricultural public lands subject to disposition, or who shall have paid the real estate tax thereon while same has not been occupied by any person shall be entitled, under the provisions of this chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twenty-four hectares.

[14] Section 1. Any provision of law, rules and regulations to the contrary notwithstanding, any natural born citizen of the Philippines who is not the owner of more than twenty-four hectares, and who since July fourth, nineteen hundred and forty-five or prior thereto, has continuously occupied and cultivated, either by himself or through his predecessors in interest, atract or tracts of agricultural public lands subject to disposition, shall be entitled, under the provisions of this Act, to have a free patent issued to him for such tract or tracts of such land not to exceed twenty-four hectares. The application shall be accompanied with a map and the technical description of the land occupied along with affidavits proving his occupancy from two disinterested persons residing in the municipality or barrio where the land may be located.

located. The facts of the case showed that the school's occupation of the contested portion of Lot No. 1991-A-1 preceded Solijon's free patent application in 1984 by 34 years. As such, Solijon could not have continuously occupied and cultivated by herself or through her predecessors-in-interests the contested 8,675 square meters of land prior to her application for free patent because there is an existing school on the area. To bolster the school's prior occupation of the subject land, the relocation survey ordered by the RTC showed that no house of Solijon was found within the same area.

In two cases, this Court has ruled that there was fraud in the applications where the applicants did not disclose that the land they were applying for were already reserved as sites for school purposes. In *Republic v. Lozada*,[15] therein respondent filed an application for registration and confirmation of two parcels of land that she allegedly inherited from her parents, who in turn, had continuous and exclusive possession of the same, hence, the application was granted. The Republic filed a petition to review the registration and cancel the certificate of title on the ground that they were procured by actual fraud. The lots were not only portions of the public domain, but there was a resolution from the municipal council reserving the lots for school site purposes. This Court ruled that Lozada was guilty of fraud for not disclosing important facts in her application for registration, including the fact that her husband's application was previously rejected because the lands were reserved as a site for school purposes. In another case[16] decided by this Court, therein private respondent Ceferino Paredes purchased a parcel of land, and two years later, applied for Free Patent over the same land but with slightly bigger area. The application was approved and Paredes was issued a Free Patent. Later on, an OCT was issued in Paredes' name. The *Sangguniang Bayan* sought the help of the Director of Lands and the Solicitor General in recovering the land on the ground that it was designated by the Bureau of

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[15] 179 Phil. 396 (1979).

[16] *Republic v. Court of Appeals,* 406 Phil. 597 (2001).

Lands as a school site long before title was issued in the name of Paredes. This Court ruled that there is a legal infirmity in Paredes' title because the land had been reserved as a school site long before his free patent application; he knew of such reservation before he filed his application; and his knowledge was apparent from the evidence he presented before the trial court. The Court also noted that Paredes did not mention the reservation in his application and, as such, he was guilty of fraud, misrepresentation, and deceit.

In this case, the facts disclosed not only a reservation for a school site but an already existing school building on the contested land. The school building was built on the subject land 34 years prior to Solijon's free patent application and the school had been in operation for 29 years also prior to Solijon's free patent application. Thus, it is impossible for Solijon not to know of the existence of the school prior to her free patent application. Solijon, therefore, could not apply, and should not have been granted free patent over the portion of Lot No. 1991-A-1 that was already occupied by petitioner 34 years prior to her free patent application.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 dated April 25, 2013 of petitioner Republic of the Philippines, represented by Raw-An Point Elementary School is **GRANTED** and the Decision of the Court of Appeals dated March 1, 2013 is **REVERSED** and **SET ASIDE**. Consequently, the Decision dated January 28, 2008 of Branch 7, Regional Trial Court, Tubod, Lanao del Norte is **ANNULLED** and the Complaint dated September 6, 2001 in Civil Case No. 07-524 is **DISMISSED**.

SO ORDERED.

Carpio (*Chairperson*), *Mendoza, Leonen,* and *Martires, JJ.,* concur.

SECOND DIVISION

[G.R. No. 207776. April 26, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GEORGE GACUSAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; CARNAL KNOWLEDGE OF A WOMAN COMMITTED THROUGH FORCE, THREAT OR INTIMIDATION; RAPE NOT NEGATED BY LACK OF RESISTANCE AS FEAR, MORAL ASCENDANCY AND PHYSICAL ADVANTAGE OF THE ACCUSED, WERE CONSIDERED.— Sections 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997, provide that: Article 266-A. *Rape*; *When And How Committed*. — Rape is Committed — 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: *a.* ***Through force, threat, or intimidation;*** x x x AAA admitted that despite the pain she felt, she neither protested nor shouted at the time of the rape incident. x x x [However,] [t]he testimony of AAA reveals that the reason she did not shout during the alleged rape was that she was afraid of losing a family. x x x "[D]ifferent people react differently to a given type of situation, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience." x x x From AAA's view, it appeared that the danger of losing a family was more excruciating than physical pain. Furthermore, a victim should never be blemished for her lack of resistance to any crime especially as heinous as rape. Neither the failure to shout nor the failure to resist the act equate to a victim's voluntary submission to the appellant's lust. x x x [There are also] [r]ecent cases reiterating that moral ascendancy replaces violence or intimidation in rape committed by a close-kin x x x [Here,] Gacusan had moral ascendancy over AAA. x x x [and] it is apparent that he also had physical advantage over her. AAA's failure to openly verbalize Gacusan's use of force, threat, or intimidation does not adversely affect the prosecution's case as long as there is enough proof that there was sexual intercourse.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF THE RAPE VICTIM CORROBORATED BY THE PHYSICIAN'S FINDING UPHELD AS AGAINST BARE DENIAL OF ACCUSED.— The Regional Trial Court found that AAA's testimony "ha[s] been delivered in a clear, sincere, spontaneous and candid manner." Moreover, AAA's positive identification of the accused as the one who raped her was corroborated by the Medico-Legal Report and the testimony of Dr. Quimoy. x x x "It is settled that when the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge." A healed or fresh laceration "is the best physical evidence of forcible defloration." x x x AAA's testimony, as well as her positive identification of the accused, was at par with the findings of the examining physician that she was raped. This cannot be outweighed by Gacusan's bare denial of the accusations against him. The prosecution's positive assertions deserve more credence than the negative averment of the accused.

3. CRIMINAL LAW; RAPE; PENALTY OF *RECLUSION PERPETUA*; AWARD OF CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES PEGGED AT ₱75,000.00 EACH.— [I]n accordance with *People v. Jugueta*, where this Court clarified that "when the circumstances of the crime call for the imposition of *reclusion perpetua* only, the civil indemnity and moral damages should be ₱75,000.00 each, as well as exemplary damages in the amount of ₱75,000.00." Thus, we modify the award of civil indemnity, moral damages, and exemplary damages to ₱75,000.00 each.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

LEONEN, *J.*:

The abuse of moral influence is the intimidation required in rape committed by the common-law father of a minor.

This Court resolves this appeal filed by George Gacusan (Gacusan) from the August 31, 2012 Decision[1] of the Court of Appeals in CA-G.R. CR H.C. No. 04832. The assailed decision affirmed the Regional Trial Court's ruling that Gacusan was guilty beyond reasonable doubt of rape in Criminal Case No. 2009-0581-D.[2]

An information for rape docketed as Criminal Case No. 2009-0581-D was filed before the Regional Trial Court, Branch 43 of Dagupan City against Gacusan on October 16, 2009.[3] The information provided:

> That at around 11 [o]'clock in the evening of October 14, 2009 in Brgy. [Inmalog], San Fabian, Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously have carnal knowledge [of AAA], a 15 year old minor, by having sexual intercourse with her, against her will and consent, to her damage and prejudice.
>
> CONTRARY to Article 266-A of the Revised Penal Code, as amended by [Republic Act No.] 8353.[4]

Upon arraignment, Gacusan pleaded not guilty to the charge.[5]

Trial on the merits ensued. The evidence for the prosecution showed that victim AAA's mother was BBB and CCC was her father.[6] When AAA was asked about her father, she claimed that her deceased father had abandoned them.[7]

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[1] *Rollo,* pp. 2-16. The Decision was penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez of the Eleventh Division, Court of Appeals, Manila.

[2] *Id*. at 15-16.

[3] CA *rollo,* p. 9.

[4] *Id*. The Information referred to the barangay as "Brgy. Inmalug Sur," while the Court of Appeals' Decision referred to it as "Brgy. Inmatug, Sur."

[5] *Rollo,* p. 3.

[6] *Id*. at 4.

[7] *Id*.

Gacusan was BBB's common-law partner.[8] At the onset of their relationship, BBB moved in to Gacusan's house.[9] Within eight (8) months of BBB's common-law relationship with Gacusan, she died, leaving AAA an orphan.[10] Even though AAA's paternal grandmother was still alive, AAA opted to stay with Gacusan "as life was harder living with her grandmother than with her stepfather."[11]

When BBB was still alive, AAA slept in a separate room in Gacusan's house.[12] When BBB died, AAA began sleeping beside Gacusan because of her fear of ghosts.[13]

At around 10:00 p.m. to 11:00 p.m. of October 14, 2009, "AAA was trying to sleep beside [Gacusan] when" she felt Gacusan's hand touching her private parts inside her shorts.[14] DDD, Gacusan's 19-year old son, was sleeping on a folding bed in the same room.[15] AAA said that she did not attempt to remove Gacusan's hand because she was already used to it.[16] Gacusan "brought out his penis and inserted it through the leg opening of [AAA]'s shorts. During this time, AAA was on her back while [Gacusan] was on his side, facing her and trying to lift her leg."[17] Gacusan was able to penetrate AAA's vagina then proceeded to do a "'*push and pull'* movement".[18] When AAA felt Gacusan's penis inside her, she got up to go to the

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[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*. at 5.

[17] *Id*.

[18] *Id*.

bathroom to urinate.[19] Thereafter, "AAA went back to sleep beside [Gacusan]."[20]

According to AAA, although she felt pain when Gacusan raped her, "she did not shout [because] she was . . . afraid of him . . . [S]he was afraid to lose [a] family and she depended on [Gacusan for] support[.]"[21] She also claimed that she "was already 15 years old [on the date of the alleged rape] and had been living with [Gacusan] for five years."[22] AAA confessed that Gacusan was already molesting her two (2) years after BBB's death.[23]

The next day after the rape incident, AAA confided to her teacher Aurora Fabia (Fabia).[24] Fabia informed the school principal, Delia Patalud, of AAA's story, prompting them to report the case to the police.[25] Gacusan was then brought to police custody.[26]

Thereafter, AAA was brought to the Medical Center of Dagupan City where she was examined by Dr. Marlene Quimoy (Dr. Quimoy).[27] The Medico-Legal Report showed that AAA had multiple lacerations and spermatozoa in her vagina, as corroborated by the testimony of Dr. Quimoy as follows:[28]

Dr. Quimoy testified that when she examined AAA, she discovered the presence of fresh erythema or redness and slight swelling around AAA's hymen. She explained that erythema [was] consistent with

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[19] *Id*.

[20] *Id*.

[21] *Id*.

[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id*.

[26] *Id*.

[27] *Id*. at 6.

[28] *Id*.

penetrating trauma caused by a finger or a penis. In addition to the erythema found around AAA's hymen, Dr. Quimoy also noted the presence of multiple healed lacerations consistent with infliction of trauma approximately 72 hours to 21 days prior to the examination. Although no fresh lacerations were discovered, Dr. Quimoy revealed that she found spermatozoa inside the vagina of AAA, which may have been caused by a shallow insertion of the penis and ejaculation into the vagina. Having only taken a sample of the sperm cell, Dr. Quimoy admitted that she did not preserve the spermatozoa sample. ***Dr. Quimoy opined that based on her examination, AAA is a victim of sexual abuse.***[29] (Emphasis supplied, citation omitted)

On the other hand, the defense presented Gacusan as its sole witness.[30] He admitted that AAA was his deceased common-law partner's daughter.[31] Gacusan, however, denied all the accusations against him. He identified his 21 and 15-year old sons and stated that all of them lived in the same house.[32] He insisted that he treated AAA as his own child.[33]

On the date of the rape incident, he claimed that all of them were watching television until 11:00 pm.[34] He also disputed having raped AAA "several times prior to October 14, 2009."[35]

On December 2, 2010, the Regional Trial Court convicted Gacusan of simple rape.[36] It found AAA's testimony as credible to establish the sordid acts committed against her.[37] AAA's testimony was "clear, sincere, spontaneous and candid."[38] Moreover, it found no trace of improper motive for AAA to

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[29] *Id*.

[30] *Id*.

[31] *Id*. and 7.

[32] *Id*. at 7.

[33] *Id*.

[34] *Id*.

[35] *Id*.

[36] *Id*.

[37] *CA rollo*, p. 30.

[38] *Id*.

concoct an accusation.[39] The trial court found that AAA only succumbed to Gacusan's act for fear that she might lose a family.[40]

The trial court also ruled that in rape committed by a father to his daughter, it is the father's moral ascendancy that replaces violation and intimidation.[41] Thus, this principle "applies in the case of a sexual abuse of a stepdaughter by her stepfather and of a goddaughter by a godfather in the sacrament of confirmation."[42] Furthermore, the medico-legal findings were consistent with AAA's testimony that she was raped.[43] Hence, there is a sufficient basis to conclude that the essential requisites of carnal knowledge have been established.[44] The dispositive portion of the decision read:

> **WHEREFORE**, in view of the foregoing, the Court finds the accused **GEORGE GACUSAN GUILTY** beyond reasonable doubt for the crime of simple rape under Article 266-A of the Revised Penal Code as amended by [Republic Act No.] 8353 and is hereby sentenced to suffer the penalty of **reclusion perpetua**. He is likewise ordered to pay AAA civil indemnity in the amount of ₱50,000.00, moral damages in the amount of ₱50, 000.00 and ₱30,000 as exemplary damages.
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> **SO ORDERED.**[45] (Emphasis in the original)

In his appeal, Gacusan insisted that his guilt was not proven beyond reasonable doubt because "the prosecution failed to prove the elements of force, threat or intimidation" in the rape incident.[46]

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[39] *Id*.

[40] *Id*.

[41] *Id*.

[42] *Id*.

[43] *Id*. at 31.

[44] *Id*.

[45] *Id*. at 32. The Decision, docketed as Crim. Case No. 2009-0581-D, was penned by Judge Caridad V. Galvez of Regional Trial Court, Branch 43, Dagupan City.

[46] *Id*. at 76.

In its August 31, 2012 Decision, the Court of Appeals affirmed Gacusan's conviction.[47] The Court of Appeals ruled that "in incestuous rape or those committed by the common law spouse of the victim's parent, evidence of force and intimidation is not necessary to secure a conviction."[48] "[I]n rape committed by an ascendant, close kin, a step parent or a common law spouse of a parent, moral ascendancy takes the place of force and intimidation."[49] Furthermore, AAA's testimony and positive identification of Gacusan as the person who raped her, as well as the medical findings confirming the rape, prevail over the bare denials of Gacusan.[50] Thus,

> **WHEREFORE**, the instant appeal is **DENIED.** The *Decision* dated December 2, 2010 of the Regional Trial Court Branch 43, Dagupan City in Criminal Case No. 2009-0581-D finding appellant George Gacusan **GUILTY** beyond reasonable doubt of simple rape under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353 is **AFFIRMED.**
>
> **SO ORDERED.**[51] (Emphasis in the original)

Hence, an appeal before this Court has been submitted.

On June 27, 2013,[52] the Court of Appeals elevated to this Court the records of this case pursuant to its Resolution[53] dated November 15, 2012. The Resolution gave due course to the Notice of Appeal[54] filed by the accused-appellant.

In the Resolution dated August 12, 2013,[55] this Court noted the records of the case forwarded by the Court of Appeals.

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[47] *Rollo*, pp. 15-16.

[48] *Id.* at 11. Citation omitted.

[49] *Id.* at 12-13. Citation omitted.

[50] *Id.* at 15.

[51] *Id.* at 15-16.

[52] *Id.* at 1.

[53] *CA rollo*, p. 124.

[54] *Id.* at 120-120-A.

[55] *Rollo*, p. 23.

The parties were then ordered to file their supplemental briefs, should they desire, within 30 days from notice.[56]

On October 24, 2013, the Office of the Solicitor General filed a manifestation[57] dated October 23, 2013 on behalf of the People of the Philippines stating that it would no longer file a supplemental brief.[58] A similar manifestation[59] was filed by the Public Attorney's Office on behalf of accused-appellant Gacusan.

The sole issue for resolution is whether Gacusan's guilt was proven beyond reasonable doubt despite the alleged failure of the prosecution to prove that Gacusan employed force, threat, or intimidation in raping AAA.

Gacusan claims that the employment of force, threat, or intimidation under Article 266-A of the Revised Penal Code was not satisfactorily proven by the prosecution.[60]

He insists that only when "the offended party is either under twelve (12) years of age or is demented" that the elements of force, threat or intimidation may be dispensed with.[61] Since it was admitted that AAA was already fifteen (15) years old at the time of the alleged rape, the prosecution should have proven that the incident was accompanied by force, threat, or intimidation.[62]

Gacusan also asserts that he was unarmed and AAA just "let him do what he wanted."[63] Thus, he concludes:

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[56] *Id*.

[57] *Id*. at 26-28.

[58] *Id*. at 26.

[59] *Id*. at 31-33.

[60] *CA rollo*, p. 76.

[61] *Id*. at 75.

[62] *Id*.

[63] *Id*. at 78.

She, in effect, ***consented to [Gacusan's] advances, inasmuch as, according to her, she was used to it as he always did it or he had done it many times before***. After the advances subsided, according to her again, she stood up to urinate and then went back to sleep—just the same—beside him. She did not cry. She did not protest. She did not complain. She did not exhibit any sign of pain or physical suffering. She just went back to bed and slept, beside him, again, as if nothing happened.[64] (Emphasis supplied)

On the other hand, the Office of the Solicitor General claims that Gacusan's argument has no merit.[65] It cites *People v. Corpuz,*[66] which states that "[i]n rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation."[67] It further asserts that "AAA's failure to show outward signs of resistance to appellant's sexual advances" does not equate to consent.[68] Thus,

> She was an orphan young girl, who was much insecure and embattled. In her misfortune, she tried to hang on with what little form of security and stability she could conceive. Unfortunately, it was under her so called savior's hand that her childhood innocence was torn apart.[69]

Furthermore, it cites *People v. Noveras*[70] to emphasize that there is no need to establish physical resistance when a victim submits because of fear due to the threats and intimidation employed by the perpetrator.[71] Physical resistance is not the only test in determining "whether a woman involuntarily

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[64] *Id*.

[65] *Id*. at 102.

[66] 597 Phil. 459 (2009) [Per *J*. Carpio-Morales, Second Division].

[67] *Id*. at 467.

[68] CA *rollo,* p. 105.

[69] *Id*. at 105.

[70] 550 Phil. 871 (2007) [Per *J*. Callejo, Sr., Third Division].

[71] CA *rollo,* p. 105. HIL 871, 887

succumbed to the lust of an accused."[72] Thus, rape victims react differently to the situation.[73]

I

The appeal lacks merit.

Sections 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997, provide that:

> Article 266-A. *Rape*; *When And How Committed*. — Rape is Committed —
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> *a.* ***Through force, threat, or intimidation;***
>
> . . . . . .
>
> Article 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by ***reclusion perpetua.*** (Emphasis supplied)

AAA admitted that despite the pain she felt, she neither protested nor shouted at the time of the rape incident.[74] Thus,

> **COURT**:
> Q: Did [you] feel pain while he was doing that to you?
> A: Yes, sir.
> Q: Why did you not shout?
>
> **PROS. ESPINOZA**:
> May I make on record, Your Honor, that the witness is crying.
>
> **WITNESS:**
> A: Because I am very much afraid of him, sir.
> Q: Why are you so afraid of him?
> A: ***Because I am afraid that I will lose a family, sir.***

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[72] *Id*.

[73] *Id*.

[74] *Id*. at 117.

Q: You mean, you are dependent on him?
A: ***Yes, sir.***
Q: He is the one supporting your needs as well as your food?
A: ***Yes, sir.***[75] (Emphasis supplied)

Appellant contends that his guilt was not proven beyond reasonable doubt since the prosecution failed to introduce evidence that will prove the elements of force, intimidation, or threat.[76] He underscores that AAA let him do "whatever he wanted and even acted as if nothing happened."[77]

Gacusan's contention is unavailing.

The testimony of AAA reveals that the reason she did not shout during the alleged rape was that she was afraid of losing a family.[78] It is reasonable to assume that she was terrified of losing someone who provided her support after losing her biological mother. She testified that she could not find comfort from her grandmother.[79]

"[D]ifferent people react differently to a given type of situation, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience."[80] One person may react aggressively, while another may show cold indifference.[81] Also, it is improper to judge the actions of children who are victims of traumatic experiences "by the norms of behavior expected under the circumstances from mature people."[82] From AAA's view, it appeared that

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[75] *Id*.

[76] *Rollo*, p. 11.

[77] *Id*.

[78] *Id*. at 12.

[79] *Id*. at 4.

[80] *People v. Lor,* 413 Phil. 725, 734 (2001) [Per *J*. Ynares-Santiago, *En Banc*].

[81] *Id*.

[82] *Id*.

the danger of losing a family was more excruciating than physical pain.[83]

Furthermore, a victim should never be blemished for her lack of resistance to any crime especially as heinous as rape.[84] Neither the failure to shout nor the failure to resist the act equate to a victim's voluntary submission to the appellant's lust.[85]

II

Recent cases[86] reiterating that moral ascendancy replaces violence or intimidation in rape committed by a close-kin cited *People v. Corpuz.*[87]

In *Corpuz,* the accused was the live-in partner of the victim's mother.[88] The victim, AAA, was 13 years old when accused Corpuz started raping her.[89] The repeated rape incidents made AAA pregnant.[90]

Accused Corpuz admitted his sexual encounters with AAA.[91] He insisted, however, that he never forced himself to AAA since he even courted her.[92] Similarly, he admitted that he was the father of AAA's child.[93]

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[83] *Rollo,* p. 15.

[84] *People v. Barberan*, G.R. No. 208759, June 22, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/208759.pdf> 6 [Per *J.* Perez, Third Division].

[85] *Id.*

[86] *See People v. Padua y Felomina,* 661 Phil. 366 (2011) [Per *J.* Brion, Third Division]; *People v. Dimanawa,* 628 Phil. 678 (2010) [Per *J.* Nachura, Third Division]; *People v. Ofemiano,*625 Phil. 92 (2010) [Per *J.* Velasco, Jr., Third Division]; *People v. Viojela y Asartin,* 697 Phil. 513 (2012) [Per *J.* Leonardo-De Castro, First Division].

[87] 597 Phil. 459 (2009) [Per *J.* Carpio- Morales, Second Division].

[88] *Id.* at 463.

[89] *Id.*

[90] *Id.*

[91] *Id.* at 464.

[92] *Id.* at 463.

[93] *Id.* at 464.

Nonetheless, this Court affirmed his conviction and held that:

> [I]n rape committed by a close kin, such as the victim's father, stepfather, uncle, or the ***common-law spouse of her mother***, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.[94] (Emphasis provided)

In *People v. Fraga,*[95] accused Fraga raped the daughters of his common-law partner.[96] Fraga tried evading his conviction by shifting from his defense of alibi to lack of force or intimidation.[97] While this Court affirmed Fraga's conviction since force and intimidation was sufficiently proven, it also emphasized that:

> [A]ccused-appellant started cohabiting with complainants' mother in 1987. As the common-law husband of their mother, ***he gained such moral ascendancy over complainants that any more resistance than had been shown by complainants cannot reasonably be expected.***[98] (Emphasis provided)

In *People v. Robles*,[99] accused Robles raped his common-law wife's daughter.[100] This Court affirmed his conviction and likened Robles' moral ascendancy over the victim to that of a biological father; thus:

> Moral ascendancy and influence by the accused, stepfather of the 12 year-old complainant, and threat of bodily harm rendered complainant subservient to appellant's lustful desires… ***Actual force or intimidation need not even be employed for rape to be committed***

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[94] *Id*. at 467.

[95] 386 Phil. 884 (2000) [Per *J*. Mendoza, *En Banc*].

[96] *Id*. at 907.

[97] *Id*. at 906.

[98] *Id*. at 907.

[99] 252 Phil. 579 (1989) [Per *J*. Paras, Second Division].

[100] *Id*. at 580.

where the over powering influence of a father over his daughter suffices.[101] (Emphasis provided, citation omitted)

Gacusan had moral ascendancy over AAA.

In this case, therefore, the issue regarding the need to prove actual force or intimidation becomes superfluous since it was already established that Gacusan was the common-law partner of AAA's deceased mother.

Furthermore, apart from Gacusan's moral ascendancy over AAA, it is apparent that he also had physical advantage over her. Given all these reasons, AAA was left without any other choice but to succumb to Gacusan's sordid acts.

III

AAA's failure to openly verbalize Gacusan's use of force, threat, or intimidation does not adversely affect the prosecution's case as long as there is enough proof that there was sexual intercourse.[102]

The Regional Trial Court found that AAA's testimony "ha[s] been delivered in a clear, sincere, spontaneous and candid manner."[103] Moreover, AAA's positive identification of the accused as the one who raped her was corroborated by the Medico-Legal Report and the testimony of Dr. Quimoy.[104] Dr. Quimoy testified that AAA had "spermatozoa and multiple healed lacerations in her vagina and redness and swelling on her hymen, consistent with penetrating trauma."[105]

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[101] *Id.* at 583. While the case refers to the accused as the victim's stepfather, a reading of the facts revealed that he was only the common law spouse of the victim's biological mother.

[102] *People v. Servano,* 454 Phil. 256, 280 (2003) [Per *J.* Corona, *En Banc*].

[103] *CA rollo*, p. 115-A.

[104] *Id.* at 116.

[105] *Id.*

"It is settled that when the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge."[106] A healed or fresh laceration "is the best physical evidence of forcible defloration."[107] AAA's lacerations on the hymen, therefore, have sufficiently established that there was sexual intercourse.

AAA's testimony, as well as her positive identification of the accused, was at par with the findings of the examining physician that she was raped. This cannot be outweighed by Gacusan's bare denial of the accusations against him. The prosecution's positive assertions deserve more credence than the negative averment of the accused.[108]

After evaluating the records of this case, this Court resolves to affirm the conviction of the accused and dismiss the appeal, there being no reversible error in the assailed decision that would warrant the exercise of this Court's appellate jurisdiction. However, in accordance with *People v. Jugueta*,[109] where this Court clarified that "when the circumstances of the crime call for the imposition of *reclusion perpetua* only, the civil indemnity and moral damages should be ₱75,000.00 each, as well as exemplary damages in the amount of ₱75,000.00."[110] Thus, we modify the award of civil indemnity, moral damages, and exemplary damages to ₱75,000.00 each.

WHEREFORE, the findings of fact and conclusions of law of the Court of Appeals are **ADOPTED**. The assailed August 31,

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[106] *People v. Noveras,* 550 Phil. 871, 887 (2007) [Per *J*. Callejo, Sr., Third Division].

[107] *Id*. Citation omitted.

[108] *People v. Baroy,* 431 Phil. 638, 655 (2002) [Per *J*. Panganiban, *En Banc*].

[109] G.R. No. 202124, April 5, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf> [Per *J*. Peralta, *En Banc*].

[110] *Id*. at 27.

2012 Decision of the Court of Appeals is **AFFIRMED with MODIFICATION.** Accused-appellant George Gacusan is found guilty beyond reasonable doubt of the crime of Rape. He is sentenced to suffer the penalty of *reclusion perpetua* and to pay private complainant ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and the costs of the suit.

In line with current jurisprudence, interest at the rate of six percent (6%) per annum should be imposed on all damages awarded from the date of the finality of this judgment until fully paid.[111]

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Mendoza,* and *Martires, JJ.,* concur.

THIRD DIVISION

[G.R. No. 212778. April 26, 2017]

TEDDY CASTRO AND LAURO SEBASTIAN, *petitioners, vs.* **PABLITO V. MENDOZA, SR., on his behalf as attorney-in-fact of RICARDO C. SANTOS, ARLENE C. MENDOZA, MARGIE AC DE LEON, NANCY S. REYES, MARITA PAGLINAWAN, NATIVIDAD C. MUNDA, MARILOU DE GUZMAN RAMOS, LEONCIA PRINCIPIO, CECILIA DINIO, ANGEL DELA CRUZ, ZENAIDA SANTOS, LOURDES S. LUZ, MARIFE F. CRUZ, ANTONIO H. SANTOS, CONSTANCIA SANTOS, MARCELINA SP. DAMEG,**

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[111] See *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 458 [Per *J.* Peralta, *En Banc*].

PLACIDO DE LEON, LILIAN SANTOS, (Collectively Organized as Bustos Public Market II Vendors and Stall Owners Association) and MUNICIPALITY OF BUSTOS, BULACAN, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; REAL PARTY-IN-INTEREST; THE PARTY WHO STANDS TO BE BENEFITED OR INJURED BY THE JUDGMENT OR THE PARTY ENTITLED TO THE AVAILS OF THE SUIT.—** A real party-in-interest is the party who stands to be benefited or injured by the judgment or the party entitled to the avails of the suit. 'Interest' within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.

2. **LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; AN AGRICULTURAL LESSOR, OWNER OF TENANTED AGRICULTURAL PROPERTY, HAS THE RIGHT TO SELL HIS LAND, WITH OR WITHOUT THE KNOWLEDGE OF THE AGRICULTURAL LESSEE, SUBJECT TO THE LATTER'S RIGHT OF REDEMPTION OVER IT.—** The subject matter of the proceedings before the PARAD was possession of the property. The property had been sold to respondent Municipality on which it constructed a public market that began operations in 1994. At this point, we find it *apropos* to note that, notwithstanding petitioners' declared status as agricultural tenants of the property, its sale to respondent Municipality was valid. The sale transferred and vested ownership of the property to the latter. An agricultural lessor, owner of tenanted agricultural property, has the right to sell his land, with or without the knowledge of the agricultural lessee, subject to the latter's right of redemption over it.

3. **ID.; ID.; ID.; TO GAIN OWNERSHIP, THERE MUST BE A TIMELY, VALID AND EFFECTIVE EXERCISE OF THE RIGHT OF REDEMPTION.—** We emphasize that the right of redemption is a different property right owned and held by petitioners against the ostensible ownership of respondent Municipality of the lot sold to it by Jesus, where the public

market stands. This is where the confusion in the execution of the PARAD ruling arises—the separate and distinct concepts of ownership of property, as material, corporeal or physical as opposed to intangible, incorporeal or juridical. In this case, the recognition of the right of redemption did not assume with it an adjudication of ownership over the thing itself, the property. Petitioners' ownership of the property is dependent on a valid and effective exercise of the right of redemption. In fact, in several instances where we sustained a tenant's right of redemption, we ultimately denied redemption of the property where the tenants failed to comply with the requisites for a valid redemption of agricultural property. Clearly, in the implementation of the PARAD's ruling, it remained incumbent upon petitioners to effect a timely and valid redemption, without which they cannot gain ownership of the property.

4. **ID.; CIVIL PROCEDURE; INTERVENTION; RULE THAT THE MOTION FOR INTERVENTION MAY BE FILED AT ANY TIME BEFORE RENDITION OF JUDGMENT BY THE TRIAL COURT; EXCEPTION; INTERVENTION AFTER JUDGMENT OUGHT TO BE ALLOWED TO PROTECT SOME INTEREST WHICH CANNOT OTHERWISE BE PROTECTED.—** True, the rule on intervention requires that the motion be filed at any time before rendition of judgment by the trial court. On more than one occasion, however, we have allowed, in exceptional circumstances, intervention even after judgment of the trial court or lower tribunal. The rule on intervention, like all other rules of procedure is intended to make the powers of the Court fully and completely available for justice. It is aimed to facilitate a comprehensive adjudication of rival claims overriding technicalities on the timeliness of its filing. Applied to this case, the intervention ought to be allowed after judgment because it is necessary to protect some interest which cannot otherwise be protected.

5. **ID.; ID.; JUDGMENTS; A DECISION THAT HAS ACQUIRED FINALITY BECOMES IMMUTABLE AND UNALTERABLE.—** Basic is the rule that a decision that has acquired finality becomes immutable and unalterable. Indeed, nothing is more settled in law than that a judgment, once it attains finality, can no longer be modified in any respect,

regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Once a case is decided with finality, the controversy is settled and the matter is laid to rest. Such a rule rests on public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law. All litigation must come to an end; any contrary posturing renders justice inutile and reduces to futility the winning party's capacity to benefit from a resolution of the case.

6. ID.; ID.; ID.; A WRIT OF EXECUTION SHOULD STRICTLY CONFORM TO EVERY PARTICULAR OF THE JUDGMENT TO BE EXECUTED; VIOLATED IN CASE AT BAR.— A writ of execution, as a general rule, should strictly conform to every particular of the judgment to be executed and not vary the terms of the judgment it seeks to enforce. Neither may it go beyond the terms of the judgment sought to be executed; the execution is void if it is in excess of and beyond the original judgment or award. x x x We find that the amendment and the subsequent issuances of the PARAD did not simply clarify an ambiguity in the dispositive portion of its decision. It expanded the original ruling, ordering a transfer of ownership despite petitioners' invalid redemption of the property.

7. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL LAND REFORM CODE (RA 3844); RIGHT OF REDEMPTION; REQUISITES; TENDER OR CONSIGNATION IS AN INDISPENSABLE REQUIREMENT TO THE PROPER EXERCISE OF THE RIGHT OF REDEMPTION BY THE AGRICULTURAL LESSEE.— Under Section 12 of the RA 3844, the right of redemption is validly exercised upon compliance with the following requirements: (*a*) the redemptioner must be an agricultural lessee or share tenant; (*b*) the land must have been sold by the owner to a third party without prior written notice of the sale given to the lessee or lessees and the DAR; (*c*) only the area cultivated by the agricultural lessee may be redeemed; and (*d*) the right of redemption must be exercised within 180 days from written notice of the sale by the vendee. Jurisprudence instructs that tender or consignation is an indispensable requirement to the proper exercise of the right of redemption by the agricultural lessee. **An offer to redeem is validly effected**

through: (*a*) a formal tender with consignation, or (*b*) a complaint filed in court coupled with consignation of the redemption price within the prescribed period. In making a repurchase, it is not sufficient that a person offering to redeem merely manifests his desire to repurchase. This statement of intention must be accompanied by an actual and simultaneous tender of payment of the full amount of the repurchase price, *i.e.*, the consideration of the sale, **otherwise the offer to redeem will be held ineffectual**.

8. ID.; ID.; THE EXISTENCE OF AN AGRICULTURAL LEASEHOLD RELATIONSHIP IS NOT TERMINATED BY CHANGES IN OWNERSHIP IN CASE OF SALE; RULE CANNOT BE APPLIED CONSIDERING THE CIRCUMSTANCES IN CASE AT BAR; DISTURBANCE COMPENSATION AWARDED INSTEAD.— We are not unaware that the new owner, respondent Municipality, is bound to respect and maintain petitioners as tenant of the property because of the latter's tenancy right attached to the land regardless of who the owner may be. Under the law, the existence of an agricultural leasehold relationship is not terminated by changes in ownership in case of sale, as in this case, since the purpose of the law is to strengthen the security of tenure of tenants. However, the circumstances [in this case] prevent our recognition of petitioners' continued (tenancy) possession and cultivation of the property: x x x Our holding that the property has been devoted to public use and cannot be appropriated and possessed by petitioners is unavoidable. The reclassification and public use of the property were recognized in the PARAD's original ruling in DARAB Case No. 739-Bulacan'94, x x x [P]etitioners are not registered owners, but possessors who ought to be in continuous cultivation and possession of the property. Their belated and ineffective redemption of the property, coupled with their collection of rentals from private respondents, speaks volumes of their acquiescence to the classification and public use of the property. In fact, petitioners awaited inauguration of the public market before they filed suit against respondent Municipality to recover possession of the property. During construction of the public market for more than a year, petitioners did not appear to question their dispossession from the property. Nonetheless, as valid tenants-possessors of the property, petitioners are entitled to disturbance compensation under Section 36 (1) of RA 3844, as amended. We remand this case to the

DARAB for determination of disturbance compensation due petitioners reckoned from the time of their actual dispossession from the property.

APPEARANCES OF COUNSEL

Yambao Law Office for petitioners.
People's Law Office for respondents P. Mendoza, Sr., *et al*.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 108859. The CA reversed and set aside issuances of the Provincial Agrarian Reform Adjudicator (PARAD) in connection with the execution of its Decision in Reg. Case No. 739-Bulacan '94.[2] The PARAD held that petitioners Teddy Castro and Lauro C. Sebastian (petitioners) are entitled to redeem the property subject of this case.

The PARAD had issued orders to effect the redemption of the property subject of this case: (1) two Resolutions dated June 8, 2007 and August 23, 2006; (2) Writ of Execution dated March 2, 2006 and Writ of Execution and Possession dated September 29, 2006; and (3) Order dated February 12, 2009.[3] These issuances were questioned before the CA *via* a petition for *certiorari* and *mandamus*[4] under Rule 65 of the Rules of Court filed by private respondents Pablito V. Mendoza, Sr. on his behalf and as attorney-in-fact of Ricardo C. Santos, Arlene C. Mendoza, Margie A.C. De Leon, Nancy S. Reyes, Marita

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[1] Penned by Associate Justice Sesinando E. Villon with Justices Florito S. Macalino and Pedro B. Corales concurring, *rollo* pp. 55-73.

[2] *Id.* at 76-90.

[3] *Id.* at 56.

[4] *Id.* at 188-234.

Paglinawan, Natividad C. Munda, Marilou De Guzman Ramos, Leoncia Principio, Cecilia Dinio, Angel Dela Cruz, Zenaida Santos, Lourdes S. Luz, Marife F. Cruz, Antonio H. Santos, Constancia Santos, Marcelina SP. Dameg, Placido De Leon, and Lilian Santos, individuals organized as Bustos Public Market II Vendors and Stall Owners Association (Bustos Market Stall Owners) against petitioners and the public respondent Municipality of Bustos, Bulacan (respondent Municipality).

The property is part of a parcel of land with a total area of 14,827 square meters, originally covered by Transfer Certificate of Title No. T-20427 registered in the name of Simeon Santos, married to Laura Cruz (original Santos property). Upon the death of Simeon, his compulsory heirs, surviving spouse, Laura, and his children, Rosalina, Natividad, Melencio, Valentin, Jesus, Tirso, and Luis, all surnamed Santos, executed a deed of extrajudicial partition with waiver of rights and sale on May 16, 1977.[5]

Petitioners, on the other hand, are agricultural tenants of the original Santos property.[6] From July 1981 when Teddy substituted his mother Rosalina Castro in the tenancy of the original Santos property, he has been in its actual possession, occupation, and cultivation, personally performing all aspects of production with the aid of labor from the other petitioner Sebastian and paying the agreed lease rentals.[7]

The controversy started when Jesus (owner-heir) sold his share in the original Santos property[8] to respondent Municipality on October 27, 1992. Jesus sold his undivided interest therein of 2,132.42 square meters for the amount of ₱1.2 Million which the respondent Municipality acquired for the expansion and

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[5] *Id.* at 76.

[6] *Id.* at 77.

[7] *Id.* at 87.

[8] Refers to both the entire landholding or Simeon co-owned by his heirs, and the portion thereof owned and subsequently sold by Jesus to the Municipality of Bustos.

construction of the Bustos public market.[9] Hereafter, we shall refer to the 2,132.42 square meter property sold by Jesus as the property. As of 1989, the lots surrounding the first public market in respondent Municipality, including the original Santos property and the portion sold by Jesus, have been classified as a commercial area.[10]

From 1991 to 1994, all phases of the sales transaction between Jesus and respondent Municipality (negotiation and acquisition) and the subsequent construction and completion of the public market, were effected without issue or complaint from the petitioners. Most notably, after the transfer of ownership of the property to respondent Municipality, the latter, in 1993, began construction of the public market which was eventually inaugurated on August 18, 1994.[11]

On August 22, 1994, after the inauguration of the public market, petitioners filed their complaint for Maintenance of Peaceful Possession with prayer for Restraining Order/ Preliminary Injunction; Pre-emption and Redemption; and Damages before the PARAD docketed as Reg. Case No. 739-Bulacan '94 against respondent Municipality.[12] In their complaint, petitioners "categorically manifest[ed] their serious intent to exercise their rights of pre-emption and redemption provided for under Sections 11 and 12, Republic Act No. 3884, as amended."[13] On August 26, 1994, petitioners deposited the amount of ₱2,300.00 as redemption price for the property.[14]

On June 28, 1995, the PARAD ruled that: (1) petitioners are the conclusive tenants of the entire original Santos property, including the property now owned by respondent Municipality;

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[9] *Rollo* p. 83.

[10] *Id.* at 84.

[11] *Id.* at 93-94.

[12] CA *rollo*, p. 235.

[13] *Rollo*, pp. 78-79.

[14] *Id.* at 85.

and (2) both Jesus and respondent Municipality failed to give notice of the sale of the property to the tenants, herein petitioners.[15] Thus:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of [petitioners] and against defendants [Santos and the Municipality of Bustos]. Likewise, [petitioners] are entitled to exercise the right of redemption of the property in question.
>
> No pronouncement as to costs.[16]

On appeal by both defendants, the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 4384 affirmed that petitioners are bona fide tenants of the property. However, it also ruled that it would be impractical to reinstate petitioners in the possession thereof or allow them to redeem it where there is no showing of petitioners' capacity to pay the redemption price.[17] Consequently, the DARAB modified the decision of the PARAD, directing instead respondent Municipality to pay disturbance compensation to petitioners:

> WHEREFORE, premises considered, judgment is hereby rendered modifying the decision rendered by the Provincial Adjudicator of Malolos, Bulacan and entering new decision ordering the herein Defendants-Appellants [respondent Municipality] to:
>
> 1. Pay [petitioners] the disturbance compensation equivalent to six hundred fifty two (652) cavans at forty (40) kilos per cavan and twenty five (25) kilos palay to be paid in cash at the prevailing market price at the time of tender of payment.[18]

This time petitioners appealed to the CA and their case was docketed as CA-G.R. SP No. 47234.[19] On July 17, 2002, the

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[15] *Id.* at 86-87.

[16] *Id.* at 90.

[17] *Id.* at 98.

[18] *Id.* at 100.

[19] Penned by then Associate Justice Ruben T. Reyes (who became Associate Justice of this Court) with Justices Renato C. Dacudao and Amelita G. Tolentino concurring, *id.* at 101-112.

CA affirmed the uniform rulings of the PARAD and the DARAB that petitioners are tenants of the property who did not receive notice of its sale by Jesus. The CA reinstated the PARAD's original ruling:

> WHEREFORE, the petition is GRANTED and the appealed Decision of the DARAB [is] SET ASIDE. The Decision of the PARAD is hereby REINSTATED with the MODIFICATION that Jesus Santos and the [respondent Municipality] are ordered to pay, jointly and severally, petitioners the amount of FIFTY THOUSAND (₱50,000.00) PESOS as payment of moral damages and the amount of TWENTY THOUSAND (₱20,000.00) PESOS as attorney's fees.[20]

This lapsed into finality on November 27, 2003.[21]

On March 2, 2006, upon motion of petitioners, the PARAD issued a Writ of Execution, which states in pertinent part:

> Whereas on November 27, 2003, an Entry of Judgment was issued by Division Clerk of Court, Ma. Roman L. Ledesma of Court of Appeals certifying that the Decision promulgated on July 17, 2002 had been final and executory on November 27, 2003.
>
> NOW THEREFORE, you are hereby directed to implement and make effective the Decision of this Board dated July 17, 2002 with the assistance of the MARO of Bustos, Bulacan, Barangay Captain of Barangay Poblacion, Bustos, Bulacan and the PNP of the locality, if necessary, and make a return of this writ within ten (10) days from receipt hereof.[22]

The succeeding Orders of the PARAD reciting the incidents and its respective rulings thereon are contained in its Writ of Execution and Possession dated September 29, 2006:

> WHEREAS, on March 9, 2006, an Implementation Report was submitted by the DARAB Sheriff stating that on March 6, 2006, he personally delivered [a] copy of the said writ to all persons concerned particularly to the Municipal Mayor of Bustos, Bulacan, together

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[20] *Id.* at 111.

[21] *Id.* at 114.

[22] *Id.*

with the manager[']s check with an amount of One Million Two Hundred Thousand pesos to redeem the subject landholding, Mr. Carlito Reyes, Municipal Mayor of Bustos thru Mr. Vandervert Bruales, the [m]ayor's private secretary, received their copy but refused to receive the said check averring that they will refer this matter to their counsel;

WHEREAS, on May 4, 2006, an Order was issued directing the Clerk of the Board to deposit the amount of ₱1.2 Million in the name of DARAB in trust for the Municipality of Bustos with the Land Bank of the Philippines;

WHEREAS, on May 12, 2006, a Report was submitted by the Clerk of the Board, Br. II, Elizabeth F. Londera, stating that **on May 10, 2006, an account was opened with the Land Bank of the Philippines (LBP-Malolos, Hi-way Branch) in the name of DARAB, in trust for the Municipality of Bustos, Bulacan, under Account No. 2791-1052-88;**

WHEREAS, on May 22, 2006, [petitioners] filed a Motion to Issue Writ of Possession;

WHEREAS, on July 7, 2006, [petitioners] filed another Motion praying that the decretal portion of the decision be amended to conform [to] the intent and spirit of the decision, in this wise:

a) Ordering the defendant Municipality of Bustos, Bulacan to receive the redemption price amounting to ₱1.2 Million which amount is now deposited with the Land Bank of the Philippines, Malolos, Bulacan as per order of this Honorable Board;
b) Ordering the defendant Municipality of Bustos, Bulacan to immediately execute a deed of conveyance in favor of the herein [petitioner] Teddy Castro covering the land in question;
c) Ordering the Register of Deeds of Guiguinto, Bulacan to register the document of sale to be executed by the defendant Municipality of Bustos, Bulacan in favor of the [petitioner] Teddy Castro and effect the cancellation of the TCT No. T-86727 in the name of Municipality of Bustos and issuing a new one in favor of Teddy Castro;
d) After full compliance of the above-stated, the DARAB Clerk of the Board is hereby ordered to issue the corresponding writ of possession directing the defendant

to vacate and turn over the possession of the subject land in favor of the [petitioner] Teddy Castro.

WHEREAS, on August 23, 2006, a Resolution was issued, the dispositive portion of which reads as follows:

"WHEREFORE, order is issued as follows:

1. Ordering the issuance of Writ of Possession in favor of the [petitioners];
2. Ordering the defendants and all individuals claiming right and interest under them to remove all improvements that [were] introduced in the landholding sought to be redeemed;
3. **Ordering the amendment of the dispositive portion of the July 17, 2002 decision by including the following orders:**

   3.1 Setting the redemption price of the subject landholding with an area of 2,132.42 square meters, more or less, covered by TCT No. T-86727 of the Registry of Deeds of Guiguinto, in the amount of ₱1.2 Million which is the reasonable price of the property;

   3.2 Ordering the defendant Municipality of Bustos, Bulacan to withdraw [the redemption] price amounting to ₱1.2 Million which amount is now deposited with the Land Bank of the Philippines, Malolos, Bulacan;

   3.3 Ordering defendants to execute the necessary Deed of Redemption[]/Conveyance in favor of the [petitioners] within a period of thirty (30) days from receipt of this order;

   3.4 Ordering the Register of Deeds for the Province of Bulacan to cause the registration of the Deed of Redemption/Conveyance and documents of sale that will be executed by the defendants.

SO ORDERED."

WHEREAS, on August 28, 2006, a Return of Service was submitted by the DARAB Sheriff, Virgilio DJ. Robles, Jr. stating that the copy of the Resolution dated August 23, 2006 was personally served to

the Municipality of Bustos, Bulacan and counsel, Atty. Eugenio Resureccion on August 25, 2006;

WHEREAS, it is the stand of this Forum that the issuance of a Writ of Possession is sanctioned by existing laws in this jurisdiction and by generally accepted principles upon w[h]ich the administration of justice rests. (Ramasanta, et al., vs. Platon, 34 O.G. 76; Abulacion, et al., -vs- CFI of Iloilo, et al., 100 Phil. 95) Likewise, this Forum as a quasi-judicial body parenthetically has the inherent power to issue a Writ of Demolition where, as in the instant case, such issuance is reasonably necessary to do justice to petitioner who is being deprived of the possession of his property by continued refusal of [defendant] to restore possession of the premises to said petitioner. [Marcelo vs. Mencias, 107 Phil. (1060)]

NOW THEREFORE, you are hereby directed to implement the decision [of the CA] dated July 17, 2002 as amended by the Resolution dated August 23, 2006.

Likewise, you are hereby ordered to direct the defendants and all persons claiming rights and interests under them to vacate the subject landholding and place [petitioners] in physical possession of the said landholding, including the removal and demolition of any standing structures in the subject landholding, with the assistance of the military and police authorities with competent jurisdiction, and make a written report relative thereto within a period of five (5) days from service hereof.[23] (Emphasis ours.)

In March 2007, both petitioners and private respondents filed various motions before the PARAD: (1) petitioners filed a Motion to Cite Defendants in Contempt (both public and private respondents) and Issue Writ of Demolition, and Motion for Execution of Deed of Conveyance; and (2) respondents, as actual possessors of the property, filed their Affidavit of Third Party Claim.[24]

On June 8, 2007, the PARAD issued a Resolution[25] disposing of the foregoing motions, completely favoring petitioners and

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[23] *Rollo*, pp. 120-122.

[24] *Id.* at 128.

[25] *Id.* at 128-132.

their claim to the property, ordering the execution of a Deed of Conveyance in petitioners' favor but denying the issuance of a Writ of Demolition:

> After going over the records, the Board resolves to grant the motion for the execution of deed of conveyance.
>
> x x x x x x x x x
>
> Likewise, the earlier awarding of the possession of the subject landholding through the issuance of writ of possession and the granting of [petitioners'] motion for issuance of deed of conveyance ruled out whatever claim that the third party claimants have over the subject property as manifested in their affidavit of third party claim addressed to his Board's sheriff. Their right as declared in their affidavit of third party claim cannot stand over and above the rights of [petitioners] who were already issued writ of possession anchored under the premise that they are tenants of the subject landholding, thus, entitled to redeem the same.
>
> Additionally, this Board cannot confer recognition on their personality to participate in the present stage of the proceedings by banking on their affidavit of third party claim that was evidently filed pursuant to Section 16, Rule 39 of the Rules of Court.
>
> x x x x x x x x x
>
> WHEREFORE, in view of the foregoing, order is hereby issued as follows:
>
> 1. Declaring the defendant Municipality of Bustos, Bulacan to have unjustifiably failed to execute the Deed of Conveyance in favor of the [petitioner] covering the subject landholding;
> 2. Granting the [petitioners'] Motion for Execution of Deed of Conveyance;
> 3. Appointing DARAB Sheriff Virgilio DJ Robles Jr. as the one tasked to execute said Deed of Conveyance;
> 4. Directing said DARAB Sheriff to execute Deed of Conveyance that has its object the landholding subject matter of this case, covered by TCT No.[ ]86727, in favor of [petitioner] Teddy Castro;
> 5. Ordering the Register of Deeds of Bulacan to effect the registration of the said Deed of Conveyance after payment by [petitioners] of the legal fees required by law;

6. After the execution and registration of the Deed of Conveyance, ordering the Register of Deeds of Bulacan to cancel TCT No. 86727 and to issue new title in the name of [petitioner] Teddy Castro covering the subject landholding;

7. Denying [petitioners'] motion to cite defendants in contempt, and;

8. Denying [petitioners'] motion for issuance of writ of demolition.[26]

Consequently, private respondents filed various motions to assail the PARAD's issuances: (1) Motion for Reconsideration[27] of the Resolutions dated August 23, 2006 and June 8, 2007; (2) Motion to Quash Resolutions dated August 23, 2006, September 29, 2006 and June 8, 2007, Writ of Execution and Possession dated September 29, 2006; (3) Motion to Set Aside Subsequent Proceedings such as, but not limited to the deed of conveyance executed by Sheriff Virgilio DJ Robles, Jr., and the issuance of TCT No. T-257885 in the name of the petitioners;[28] (4) Urgent Motion For Leave To Intervene as Defendant Intervenor; and (5) Motion for Inhibition.[29]

Once again, private respondents did not gain reprieve before the PARAD. In its Order dated July 23, 2008,[30] the PARAD denied all of private respondents' motions:

WHEREFORE, premises considered, order is hereby issued as follows:

1. Denying the Motion to Intervene filed by Bustos Public Market Vendors and Stall Owners Association and Pablo Mendoza for lack of merit;

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[26] *Id.* at 129-131.

[27] CA *rollo*, pp. 116-125.

[28] *Id.* at 126-156.

[29] *Rollo*, p. 178.

[30] *Id.* at 178-182.

2. Denying the Motion for Reconsideration of the Resolution dated August 23, 2006 and the Resolution dated June 8, 2007; Motion to Quash Resolutions of August 23, 2006, September 29, 2006 and June []8, 2007, Writ of Execution and Possession of September 29, 2006 and to Set Aside Subsequent Proceedings Such As, But Not Limited to Deed of Conveyance Executed by Sheriff Virgilio DJ Robles, Jr. and the Issuance of TCT No. T-257885;

3. Denying the Motion for Inhibition filed by Third Party Claimants for lack of merit, and;

4. Directing the DAR Survey Division, DAR Provincial Office, Baliuag, Bulacan, through the Provincial Agrarian Reform Officer (PARO), to conduct verification/relocation survey within a period of ten (10) days from receipt of this order purposely to determine the identity and the metes and bounds of the 2,132.42 square meter landholding that Jesus Santos sold in favor of the Municipality of Bustos and was the subject of redemption. Likewise, to ascertain whether the landholding where the Bustos Public Market stands is a part and parcel thereof. The PARO is directed to make a report of the findings within a period of five (5) days from the termination of the verification/relocation survey.[31]

Persistent in obtaining relief, and after discovering a written report of a Survey Team pointing to a discrepancy in the location of the property as sold by Jesus in relation to where the public market now stood, private respondents filed a Motion to Set Verification/Survey Report for Hearing.[32]

On February 12, 2009, the PARAD denied respondents' motion.[33]

From this latest denial, private respondents directly sought relief from the CA in CA-G.R. SP No. 108859.[34] They alleged

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[31] *Id.* at 181-182.

[32] *Id.* at 183-185.

[33] *Id.* at 186-187.

[34] *Id.* at 188-234.

grave abuse of discretion by the PARAD in amending the already final and executory decision of June 28, 1995 and imposing the transfer of ownership of the property to petitioners. Private respondents questioned the following: (1) inadequacy of the redemption price set at ₱1.2 Million, which was way below the actual amount of ₱6 Million spent by respondent Municipality in the construction of the public market; (2) petitioners' belated and invalid tender of payment of the ₱1.2 Million redemption price; (3) issuance of a Writ of Possession and the subsequent execution of a Deed of Conveyance in favor of petitioners; and (4) failure to ascertain the actual lot description and titling of the property.

The CA granted the petition. The CA declared that private respondents, as lessees of the market stalls, have *locus standi, i.e.* they stand to benefit or be injured by the judgment in the suit as lawful tenants and occupants of the market stalls. With respect to the merits, the CA ruled that the PARAD committed grave abuse of discretion: (1) in amending the June 28, 1995 Decision to order the transfer of ownership of the property;[35] (2) in not finding that petitioners failed to timely exercise their right of redemption;[36] and (3) in disregarding the devotion to public use of the property.[37] The CA disposed, thus:

WHEREFORE, in light of the foregoing, the petition is **GRANTED**. Judgment is hereby rendered as follows:

1. The *resolutions* dated August 23, 2006 and June 8, 2007, *writ of execution* dated March 2, 2006, *writ of execution and possession* dated September 29, 2006 and *order* dated February 12, 2009, and all proceedings pursuant thereto and in furtherance thereof including but not limited to the Deed of Conveyance executed by Sheriff Virgilio DJ Robles, [Jr.,] issued by Provincial Agrarian Reform Adjudicator (PARAD), in DARAB Case No. 4384 (Reg. Case No. 739-Bulacan '94) are hereby **REVERSED** and **SET ASIDE**.

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[35] *Id.* at 66.

[36] *Id.* at 68.

[37] *Id.* at 72.

2. Transfer Certificate of Title No. T-257885 in the name of [petitioners] Teddy Castro and Lauro C. Sebastian is hereby **ANNULLED**.

3. [Petitioners] Teddy Castro and Lauro C. Sebastian are hereby **ORDERED** to vacate and surrender the possession of the Bustos Public Market, including Lot 1-A-7, to public respondent Municipality of Bustos.[38]

Hence, this appeal by *certiorari* raising the following errors:

A. THE COURT OF APPEALS COMMITTED SERIOUS ERROR AND/OR PROCEDURAL LAPSES IN REVERSING AND SETTING ASIDE THE RESOLUTIONS, WRITS AND ORDER ISSUED BY THE PROVINCIAL AGRARIAN REFORM ADJUDICATOR (PARAD) IN DARAB CASE NO. 4384 (REG. CASE NO. 739-BULACAN[ ]'94), INCLUDING THE PROCEEDINGS PURSUANT THERETO AND THE DEED OF CONVEYANCE EXECUTED BY SHERIFF VIRGILIO DJ ROBLES[, JR.] CONSIDERING THAT –

(i) SAID ISSUANCES, PROCESSES AND PROCEEDINGS, EXCEPT FOR THE ORDER DATED FEBRUARY 12, 2009, WERE MADE AND DONE SEVERAL YEARS PRIOR TO THE FILING OF THE PETITION FOR CERTIORARI AND MANDAMUS (CA- G.R[.] SP NO.[ ]108859), THUS, ALREADY WAY BEYOND THE 60-DAY REGLEMENTARY PERIOD REQUIRED UNDER SECTION 4, RULE 65 OF THE RULES OF COURT;

(ii) THE TIMELINESS OF THE FILING OF THE SAID PETITION WAS BEING RECKONED SOLELY ON THE RECEIPT OF THE PARAD ORDER DATED FEBRUARY 12, 2009 DENYING PRIVATE RESPONDENTS' MOTION TO SET VERIFICATION/SURVEY REPORT FOR HEARING, WHICH THEREFORE SHOULD HAVE BEEN THE ONLY ISSUANCE OR ACT OF PARAD WHICH COULD BE THE PROPER SUBJECT OF THE SAID PETITION.

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[38] *Id.* at 72-73.

B. THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT FINDING THAT AS MERE LESSEES OR CONCESSIONAIRES OF MARKET STALLS OF RESPONDENT MUNICIPALITY IN BUSTOS PUBLIC MARKET, PRIVATE RESPONDENTS COULD NOT BE ALLOWED TO INTERVENE IN THE SAID DARAB CASE NOR TO CHALLENGE VIA CERTIORARI AND MANDAMUS THE RESOLUTIONS, WRITS AND ORDERS ISSUED THEREIN SINCE THEY HAVE NO RIGHTS OR INTERESTS IN THE PARCEL OF LAND SUBJECT OF THE SAID DARAB CASE SEPARATE AND DISTINCT FROM OR INDEPENDENT OF THAT OF THEIR LESSOR-RESPONDENT MUNICIPALITY, ESPECIALLY SO AFTER THE JUDGMENT AGAINST THE LATTER BECAME FINAL AND EXECUTORY AND WAS SUBSEQUENTLY IMPLEMENTED BY THE PARAD.

C. THE COURT OF APPEALS COMMITTED PALPABLE ERROR IN APPLYING THE DOCTRINE OF *LOCUS STANDI* TO JUSTIFY PRIVATE RESPONDENTS' BID TO INTERVENE IN DARAB CASE NO. 4384 AND TO ASSAIL, THROUGH THE SAID PETITION FOR CERTIORARI AND MANDAMUS, THE SAID RESOLUTIONS, WRITS AND ORDERS ISSUED THEREIN BY THE PARAD EVEN WHEN—

(i) THERE IS NO CONSTITUTIONAL ISSUE INVOLVED IN THE SAID DARAB CASE AND PETITION, THESE CASES NOT BEING PUBLIC SUITS;

(ii) THE RULE ON REAL PARTY-IN-INTEREST IS THE ONE APPLICABLE THEREIN, THE SAME BEING A CONCEPT OF CIVIL PROCEDURE STRICTLY OBSERVED AND APPLIED IN PRIVATE SUITS, LIKE THE ONE OBTAINING IN THE SAID DARAB CASE.

D. THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT FAILED TO CONSIDER AND HOLD THAT THE PETITION FOR CERTIORARI AND MANDAMUS IS ALREADY BARRED BY *RES JUDICATA* SINCE –

(i) AS MERE LESSEES OF RESPONDENT MUNICIPALITY, THE PRIVATE RESPONDENTS

THEREFORE ARE JUST PRIVIES OF THE LATTER, AND AS SUCH, THEY ARE BOUND BY THE FINALITY OF THE JUDGMENT RENDERED IN THE SAID DARAB CASE. AS WELL AS BY THE EXECUTION PROCEEDINGS TAKEN THEREIN;

(ii) SOME OF THE PRIVATE RESPONDENTS HEREIN LED BY DR. PABLITO MENDOZA, SR., HAD EARLIER FILED AN INJUNCTION SUIT ASSAILING THE SAME PARAD RESOLUTION DATED AUGUST 23, 2006 WHICH WAS DISMISSED BY THE TRIAL COURT ON GROUND OF LACK OF JURISDICTION, FOR BEING AN AGRARIAN CASE, AND WHICH DISMISSAL WAS AFFIRMED WITH FINALITY BY THE COURT OF APPEALS IN CA-GR CV NO. 90750.

E. THE COURT OF APPEALS GRAVELY ERRED IN APPLYING THE 180-DAY REDEMPTION PERIOD UNDER SECTION 12 OF REPUBLIC ACT (RA) NO. 3844 AS AMENDED BY RA NO. 6389, AND IN HOLDING THAT THE TENDER AND CONSIGNATION OF THE REDEMPTION PRICE WERE EFFECTED BY PETITIONERS BEYOND THE SAID PERIOD OF TIME.

F. THE COURT OF APPEALS GRIEVOUSLY ERRED IN HOLDING THAT SINCE A PUBLIC MARKET NOW STANDS ON THE SUBJECT LOT, THE NATURE AND USE OF THE SAID LOT HAVE CHANGED, THEREBY MAKING IT A PUBLIC PROPERTY, SUCH THAT PETITIONERS RIGHT TO REDEEM THE SAME, THOUGH RECOGNIZED BY IT IN CA-GR SP NO. 47234, CAN NO LONGER BE EXERCISED.

G. THE COURT OF APPEALS SERIOUSLY ERRED IN CONCLUDING THAT THE ASSAILED ISSUANCES OF THE PARAD HAVE ALTERED AND SUBSTANTIALLY MODIFIED THE PARAD DECISION AND ALSO IN HOLDING THAT THE ASSAILED WRIT OF POSSESSION ISSUED BY THE PARAD IN THE SUBJECT DARAB CASE IS NOT PROPER AS SUCH A WRIT MAY BE ISSUED ONLY IN THE THREE (3) INSTANCES CITED IN ITS DECISION.

H. THE COURT OF APPEALS FURTHER ERRED IN CONCLUDING THAT GRAVE ABUSE OF DISCRETION

OBTAINS IN CA-G.R SP NO. 108859 WHEN IT COULD NOT EVEN SPECIFY OR CITE THE PARTICULAR ACTS OR OMISSIONS ON THE PART OF PARAD WHICH CONSTITUTE OR AMOUNT TO GRAVE ABUSE OF DISCRETION.[39]

We simplify the issues for our resolution, to wit:

1. Whether private respondents, as owners of the market stalls and lessees in the public market, are real parties-in-interest.

2. Whether the PARAD correctly amended its June 28, 1995 Decision.

2.1. Whether the transfer of ownership is covered by the PARAD's original ruling recognizing petitioners' right to redeem the property.

2.2. Whether petitioners timely and validly exercised their right of redemption under Section 12 of Republic Act No. 3844 (RA 3844),[40] as amended by RA 6389; and

3. Whether petitioners may recover possession, and obtain ownership, of the property.

We deny the petition. We agree with the CA's ultimate disposition that petitioners, albeit found to be agricultural tenants of the property, cannot recover possession and gain its actual ownership.

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First, we lay down the following clarifications:

1. The June 28, 1995 Decision of the PARAD indeed recognized petitioners' right of redemption, a real right,[41] but it did not contemplate an adjudication of ownership.

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[39] *Id.* at 18-21.

[40] Otherwise known as the Agricultural Land Reform Code.

[41] In a juridical sense, things as property includes not only material objects, but also rights over the object. Only rights which are patrimonial in character can be considered as things. See CIVIL CODE, Art. 414 and Arturo Tolentino, II CIVIL CODE OF THE PHILIPPINES 5 (1983).

2. In its execution, Section 11,[42] not Section 10,[43] of Rule 39 is applicable. It is a special judgment since the act sought to be executed, redemption of the property, involves a prestation to

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[42] *Sec. 11. Execution of special judgments*. — When a judgment requires the performance of any act other than those mentioned in the two preceding sections, a certified copy of the judgment shall be attached to the writ of execution and shall be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such party or person may be punished for contempt if he disobeys such judgment.

[43] *Sec. 10. Execution of judgments for specific act.* —

(*a) Conveyance, delivery of deed, or other specific acts; vesting title.*—If a judgment directs a party to execute a conveyance of land or personal property, or to deliver deeds or other documents, or to perform any other specific act in connection therewith, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effect as if done by the party. If real or personal property is situated within the Philippines, the court in lieu of directing a conveyance thereof may by an order divest the title of any party and vest it in others, which shall have the force and effect of a conveyance executed in due form of law.

(b) *Sale of real or personal property*. — If the judgment be for the sale of real or personal property, to sell such property, describing it, and apply the proceeds in conformity with the judgment.

(c) *Delivery or restitution of real property*. — The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee, otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

(d) *Removal of improvements on property subject of execution*. — When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after the hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

be reciprocally performed by the petitioners and the respondent Municipality.[44]

3. The property is not levied property to answer for the judgment liability of a judgment obligor.[45] It is the object of petitioners' property right, *i.e.*, redemption of the property.

4. The bone of contention among the parties is possession and occupation of the property in their various capacities: (i) petitioners, as possessors-holders of the real right pertaining to the property, agricultural tenants with a right of redemption; (ii) respondent Municipality, as actual owner and lessor of the public market constructed thereon; and (iii) respondents, as owners of the market stalls, vendors-lessees in the public market.

Petitioners maintain that the CA erred in applying the rule on *locus standi* absent a constitutional issue raised by private respondents. In addition, even applying the applicable rule in civil cases on real parties-in-interest, petitioners insist that private respondents are not entitled to the avails of the suit and have not shown material and substantial interest in the property separate and distinct from that of their lessor, respondent Municipality.

We disagree.

A real party-in-interest is the party who stands to be benefited or injured by the judgment or the party entitled to the avails of the suit.[46] 'Interest' within the meaning of the rule means material interest, an interest in issue and to be affected by the decree,

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(e) *Delivery of personal property.* — In judgment for the delivery of personal property, the officer shall take possession of the same and forthwith deliver it to the party entitled thereto and satisfy any judgment for money as therein provided.

[44] *See* CIVIL CODE, Art. 1191 and *Megaworld Properties and Holdings, Inc. v. Majestic Finance and Investment Co., Inc.*, G.R. No. 169694, December 9, 2015, 777 SCRA 37, 46-47.

[45] See RULES OF COURT, Rule 39, Sec. 9 (b) and Sec. 10.

[46] RULES OF COURT, Rule 3, Sec. 2.

as distinguished from mere interest in the question involved, or a mere incidental interest.[47]

The subject matter of the proceedings before the PARAD was possession of the property. The property had been sold to respondent Municipality on which it constructed a public market that began operations in 1994. At this point, we find it *apropos* to note that, notwithstanding petitioners' declared status as agricultural tenants of the property, its sale to respondent Municipality was valid. The sale transferred and vested ownership of the property to the latter. An agricultural lessor, owner of tenanted agricultural property, has the right to sell his land, with or without the knowledge of the agricultural lessee, subject to the latter's right of redemption over it.[48]

We emphasize that the right of redemption is a different property right owned and held by petitioners against the ostensible ownership of respondent Municipality of the lot sold to it by Jesus, where the public market stands.

This is where the confusion in the execution of the PARAD ruling arises—the separate and distinct concepts of ownership of property, as material, corporeal or physical as opposed to intangible, incorporeal or juridical.[49] In this case, the recognition of the right of redemption did not assume with it an adjudication of ownership over the thing itself, the property. Petitioners' ownership of the property is dependent on a valid and effective exercise of the right of redemption. In fact, in several instances where we sustained a tenant's right of redemption, we ultimately denied redemption of the property where the tenants failed to comply with the requisites for a valid redemption of agricultural property.[50] Clearly, in the implementation of the PARAD's ruling,

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[47] *Oco v. Limbaring*, G.R. No. 161298, January 31, 2006, 481 SCRA 348, 358.

[48] *Perez v. Aquino*, G.R. No. 217799, March 16, 2016, 787 SCRA 581, 588.

[49] See Edgardo L. Paras, II *CIVIL CODE OF THE PHILIPPINES ANNOTATED* 3 (2016).

[50] *Estrella v. Francisco*, G.R. No. 209384, June 27, 2016; *Perez v. Aquino, supra*.

it remained incumbent upon petitioners to effect a timely and valid redemption, without which they cannot gain ownership of the property.

There is no quarrel that private respondents are market stall owners and vendors of the public market, owned and operated by respondent Municipality.[51] At the time of the filing of their Affidavit of Third Party Claim and their Motion to Intervene, private respondents had a contract of lease with the respondent Municipality expiring on August 17, 2008. Private respondents, as vendors-lessees in the public market, are possessors, holder of the property to keep or enjoy, the ownership pertaining to another person.[52] Notwithstanding the legal controversy between petitioners and the Municipality of Bustos, private respondents validly obtained possession of the property, under color of title, from respondent Municipality. As a possessor in the concept of owner, respondent Municipality enjoyed the legal presumption that it possesses with just title without obligation to show or prove it.[53] The public market was already constructed when private respondents became its lessees; private respondents were not aware that there exists in their title any flaw which invalidates it.[54] Because of the assailed PARAD rulings, private respondents' possession of the property, as market stall vendors, became precarious.

In refusing to recognize private respondents' *terceria* claim[55] and denying their Motion to Intervene, the PARAD through

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[51] In its Answer to the original Complaint, the respondent Municipality alleged that: "[I]n as much that a certificate of ownership of the lot on which to construct our public market is required before our application for loan could be approved, this Office submitted to the Minute II Fringe Program Office, the Deed of Absolute Sale (Exhibit "A") executed by the Spouses Jesus Santos and Simplicia Pablo in favor of the Municipality of Bustos, Bulacan." *Rollo*, p. 84.

[52] See CIVIL CODE, Art. 525.

[53] See CIVIL CODE, Art. 541.

[54] See CIVIL CODE, Art. 526.

[55] RULES OF COURT, Rule 39, Sec. 16.

its assailed Resolution dated June 8, 2007 and Order dated July 23, 2008, rejected private respondents' claims. According to the PARAD, they are mere successors-in-interest of respondent Municipality whose dispossession from the property had long been adjudicated, the judgment therein already under execution.

It is apparent however, that despite their decreed expulsion and dispossession from the property, private respondents have not been given their day in court. They were simply decreed deprived of their market stalls upon their refusal to pay rentals to petitioners who, curiously, do not appear to be in continuous cultivation of the property.[56] Thus, their intervention even after finality of judgment, only at the execution proceedings, should have been allowed.[57]

We are not unaware that private respondents, vendor-owner of the market stalls, merely derived their right to possess the property from their contract of lease with respondent Municipality such that the final and executor judgment against respondent Municipality is likewise conclusive upon them.

However, therein lies the rub since the DARAB's resolutions assailed by private respondents unceremoniously effected their dispossession from the property by adjudicating and transferring its ownership, declaring an owner different from their original lessor, respondent Municipality. Plainly, as vendor-owner of the market stalls, possessors of the property, private respondents are necessary parties who ought to have been impleaded in the case if complete relief is to be accorded those already parties, or for a complete determination or settlement of the claim subject of the action.[58]

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[56] The records do not show how petitioners remain in cultivation of the entirety of the property.

[57] See *Pinlac v. Court of Appeals*, G.R. No. 91486, September 10, 2003, 410 SCRA 419, 425-426, citing *Mago v. Court of Appeals*, G.R. No. 115624, February 25, 1999, 303 SCRA 600, 608-609.

[58] RULES OF COURT, Rule 3, Sec. 8.

Considering the nature and devotion to public use of the property, the questionable redemption made by petitioners, the continued existence of the public market on the property, and absence of proof of petitioners' continued cultivation of the property, we allow the intervention filed by respondents even at that late stage.

True, the rule on intervention requires that the motion be filed at any time before rendition of judgment by the trial court.[59] On more than one occasion, however, we have allowed, in exceptional circumstances, intervention even after judgment of the trial court or lower tribunal.[60] The rule on intervention, like all other rules of procedure is intended to make the powers of the Court fully and completely available for justice. It is aimed to facilitate a comprehensive adjudication of rival claims overriding technicalities on the timeliness of its filing.[61] Applied to this case, the intervention ought to be allowed after judgment because it is necessary to protect some interest which cannot otherwise be protected.[62]

In *Mago v. Court of Appeals*, intervention was granted even after the decision became final and executory, thus:

> The permissive tenor of the provision on intervention shows the intention of the Rules to give to the court the full measure of discretion in permitting or disallowing the same. But needless to say, this discretion should be exercised judiciously and only after consideration of all the circumstances obtaining in the case.[63]

Moreover, we emphasize that it is an accepted rule of procedure for this Court to strive to settle the entire controversy in a single

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[59] RULES OF COURT, Rule 19, Sec. 2.

[60] *Navy Officers' Village Association, Inc. (NOVAI) v. Republic*, G.R. No. 177168, August 3, 2015, 764 SCRA 524; *Galicia v. Manliquez Vda. De Mindo*, G.R. No. 155785, April 13, 2007, 521 SCRA 85.

[61] *Pinlac v. Court of Appeals, supra* at 424-425.

[62] See *Navy Officers' Village Association, Inc. (NOVAI) v. Republic, supra* at 544.

[63] *Mago v. Court of Appeals, supra* at 608.

proceeding, leaving no root or branch to bear the seeds of future litigation.[64] In all, to accord complete relief to all parties and a complete determination or settlement of the claim, petitioners' intervention should have been allowed.

Significantly, respondent Municipality adopted the position of private respondents in CA-G.R. SP No. 108859. Respondent Municipality likewise sought the annulment and reversal of the assailed PARAD rulings pointing out that:

> A. THE DECISION OF [THE PARAD] ISSUED ON JUNE 28, 1995 IS INCOMPLETE AND UNENFORCEABLE
>
> x x x x x x x x x
>
> B. ASSUMING WITHOUT ADMITTING THAT THE JUNE 28, 1995 DECISION IS VALID AND COMPLETE, THE ISSUED RESOLUTIONS AND WRITS BY [THE] PARAD HAVE NO FORCE AND EFFECT IN LAW AND THUS, ILLEGAL FOR THEY ALL WORK TO MODIFY THE DECISION OF JUNE 28, 1995
>
> x x x x x x x x x
>
> C. THE WRITS ISSUED BY PARAD PLACING AND RECONVEYING THE OWNERSHIP OF THE PROPERTY IN QUESTION UPON HEREIN [PETITIONERS] IS VIOLATIVE OF THE LAW SINCE THE PROPERTY BECOMES A PUBLIC PROPERTY
>
> x x x x x x x x x
>
> D. ASSUMING THAT THE [PETITIONERS] MAY PROPERLY REDEEM THE PROPERTY IN QUESTION, THEY CANNOT DO SO SINCE THEY HAVE FAILED TO EXERCISE THE RIGHT OF REDEMPTION IN ACCORDANCE WITH LAW[65]

and praying for the following:

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[64] *National Power Corporation v. Court of Appeals*, G.R. No. 84695, May 8, 1990, 185 SCRA 169, 173.

[65] CA *rollo*, pp. 335-337. Underlining in the original.

a. Reversing and setting aside as null and void the Resolutions of August 23, 2006, September 29, 2006 and June 8, 2007, and the Writ of Execution of March []2, 2006 and February 12, 2009, and Writ of Execution and Possession of September 29, 2006, and subsequent proceedings including but not limited to [the] Deed of Conveyance executed by Sheriff Virgilio DJ Robles, and the issuance of TCT No. T-257885 in the name of the [petitioners];

b. Declaring that respondents' right of redemption had expired and [was] rendered ***functus oficio***, and that the DARAB has no more jurisdiction to act on the matter, for failure of respondents to exercise it in accordance with Sec. 12, RA 3844, and prevailing jurisprudence;

c. Ordering [petitioners] to vacate and surrender possession of the [p]ublic [m]arket including Lot 1-A-7 to the Municipality of Bustos and to account for any and all rentals received by them and to reimburse [ ] the Municipality of Bustos.

[Respondents] pray for other reliefs which may be legal and equitable under the premises. (Emphasis in the original.)[66]

We now come to the central issue of whether the PARAD acted correctly when it amended the decretal portion of its June 28, 1995 Decision and ordered the redemption and consequent transfer of ownership of the property.

Basic is the rule that a decision that has acquired finality becomes immutable and unalterable. Indeed, nothing is more settled in law than that a judgment, once it attains finality, can no longer be modified in any respect, regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.[67] Once a case is decided with finality, the controversy is settled and the matter is laid to rest.[68] Such a rule rests on public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some

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[66] *Id.* at 339-340.

[67] *De Ocampo v. RPN-9/Radio Philippines, Inc.*, G.R. No. 192947, December 9, 2015, 777 SCRA 183, 189-190.

[68] *Siy v. National Labor Relations Commission*, G.R. No. 158971, August 25, 2005, 468 SCRA 154, 161.

definite date fixed by law.[69] All litigation must come to an end; any contrary posturing renders justice inutile and reduces to futility the winning party's capacity to benefit from a resolution of the case.[70]

The CA correctly ruled that the assailed orders and resolutions of the PARAD altered the June 28, 1995 Decision and disposed of matters which were not originally contemplated by the decision. However, after stating the rule on finality of judgments and enumerating the instances when a Writ of Possession may issue, the CA concluded that the assailed PARAD rulings were not covered by the original decision, without elaborating its reasons for so ruling.

On the other hand, in ordering the amendment of its June 28, 1995 Decision, the PARAD cited the exception to the rule of clarifying an ambiguity caused by an omission in the disposition of the decision which may be clarified by reference to the body of the decision.

A writ of execution, as a general rule, should strictly conform to every particular of the judgment to be executed and not vary the terms of the judgment it seeks to enforce. Neither may it go beyond the terms of the judgment sought to be executed; the execution is void if it is in excess of and beyond the original judgment or award.[71]

Thus, we reference again the dispositive portions of the original ruling as against the August 23, 2006 Resolution which amended the former, in pertinent part:

WHEREFORE, premises considered, judgment is hereby rendered in favor of [petitioners] and against [respondent Municipality and

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[69] *Filipro, Inc. v. Permanent Savings & Loan Bank*, G.R. No. 142236, September 27, 2006, 503 SCRA 430, 438.

[70] *CO IT a.k.a. Gonzalo Co It v. Anthony Co, et al.*, G.R. No. 198127, October 5, 2016.

[71] *Pascual v. Daquioag*, G.R. No. 162063, March 31, 2014, 720 SCRA 230, 240-241.

Jesus Santos]. Likewise, [petitioners] are entitled to exercise the right of redemption of the property in question.[72]

x x x x x x x x x

3. Ordering the amendment of the dispositive portion of the July 17, 2002 decision by including the following orders:

3.1 Setting the redemption price of the subject landholding with an area of 2,132.42 square meters, more or less, covered by TCT No. T-86727 of the Registry of Deeds of Guiguinto, in the amount of [₱]1.2 Million which is the reasonable price of the property;

3.2 Ordering the [respondent Municipality] to withdraw the redemption price amounting to [₱]1.2 Million which is now deposited with the Land Bank of the Philippines, Malolos, Bulacan;

3.3 Ordering [respondent Municipality and Jesus Santos] to execute the necessary Deed of Redemption/Conveyance in favor of the [petitioners] within a period of thirty (30) days from receipt of this order;

3.4 Ordering the Register of Deeds for the Province of Bulacan to cause the registration of the Deed of Redemption/Conveyance and documents of sale that will be executed by the [respondent Municipality and Jesus Santos].[73]

We also cite Section 12 of RA 3844, as amended by RA 6389, which provides:

Sec. 12. *Lessee's right of Redemption*. – In case the landholding is sold to a third person without the knowledge of the agricultural lessee, the latter shall have the right to redeem the same at a reasonable price and consideration: *Provided,* That where there are two or more agricultural lessees, each shall be entitled to said right of redemption only to the extent of the area actually cultivated by him. The right of the redemption under this Section may be exercised within one hundred eighty days from notice in writing which shall be served by the vendee on all lessees affected and the Department of Agrarian Reform upon the registration of the sale, and shall have priority over any other right of legal redemption. The redemption price shall be the reasonable price of the land at the time of the sale.

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[72] *Rollo*, p. 90.

[73] CA *rollo*, pp. 96-97.

Upon filing of the corresponding petition or request with the department or corresponding case in court by the agricultural lessee or lessees, the said period of one hundred eighty days shall cease to run.

Any petition or request for redemption shall be resolved within sixty days from the filing thereof; otherwise, the said period shall start to run again.

The Department of Agrarian Reform shall initiate, while the Land Bank shall finance, said redemption as in the case of pre-emption.

We find that the amendment and the subsequent issuances of the PARAD did not simply clarify an ambiguity in the dispositive portion of its decision. It expanded the original ruling, ordering a transfer of ownership despite petitioners' invalid redemption of the property.

We have reviewed the rulings of the PARAD, the DARAB, and the CA on the original case determining petitioners' right over the property. We fail to see in any of the bodies of each decision the extent of the amendment made by the PARAD. The three (3) rulings uniformly dwelt on petitioners' status as agricultural tenants with right of redemption over the property. In fact, in their appeal to the CA questioning the DARAB's ruling, petitioners raised two (2) errors of the DARAB: (a) in not ruling that petitioners are entitled to exercise the right of redemption over the property being the lessees-tenants; and (b) in not awarding moral damages and attorney's fees to petitioners.

Moreover, the ruling of the CA in CA-G.R. SP No. 47234, which attained finality and reinstated the ruling of the PARAD with modification on the award of moral damages and attorney's fees, likewise did not discuss any consequent transfer or adjudication of ownership of the property. For reference, we cite the brief headings of the CA's ruling:

> Petitioners Are Entitled to Exercise The Right of Redemption Over The Subject Farmholding[74]
>
> x x x x x x x x x

[74] *Rollo*, p. 106. Underlining in the original.

Petitioners Are Entitled To An Award Of Moral Damages And Attorney's Fees[75]

By contrast, the bodies of the three (3) rulings lacked the following: (1) discussion on the reasonable redemption price; (2) consignation by petitioners of the redemption price at the time of the filing of the complaint, not simply the amount of only ₱2,300.00; (3) liquidation and determination of the useful expenses and improvements made on the lot by the respondent Municipality as transferee-owner of the property; (4) validity of the tender of payment made by petitioners; and (5) discussion on automatic transfer of ownership and execution of a deed of conveyance.

Evidently and as previously pointed out, the rulings of the three (3) tribunals did not delve into an adjudication of ownership over the property since petitioners first had to validly redeem it. We cannot overemphasize that the right of redemption, albeit a property right, is not an adjudication of ownership.

An adjudication of ownership as decreed in the judgment is a categorical determination of rights to the thing by the winning party, to enjoy and dispose of it, without other limitations than those established by law.[76] In this case, the PARAD ruling favoring petitioners simply recognized their property right to redeem the property. Without such redemption, petitioners could not own and appropriate it.

In the alternative, we have ruled that an adjudication of ownership necessarily includes delivery of possession. Possession is an incident of ownership; whoever owns the property has the right to possess it. Thus, in several occasions, we sustained a writ of execution awarding possession of land, though the decision sought to be executed did not direct the delivery of the possession of the land to the winning parties.[77]

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[75] *Id.* at 109. Underlining in the original.

[76] See CIVIL CODE, Art. 428: *De leon v. Public Estates Authority*, G.R. No. 181970, August 3, 2010, 626 SCRA 547.

[77] *Pascual v. Daquioag, supra* note 71, at 240-242.

Even a Certificate of Land Transfer (CLT) does not vest ownership in its holder. In *Dela Cruz v. Quiazon*,[78] we held that a CLT under Presidential Decree No. 27[79] (P.D. No. 27) merely evinces that its grantee is qualified to avail himself of the statutory mechanism for the acquisition of ownership of the land tilled by him as provided under P.D. No. 27.[80] It is not a muniment of title that vests in the farmer/grantee absolute ownership of his tillage.[81] It is only after compliance with the conditions which entitle a farmer/grantee to an emancipation patent that he acquires the vested right of absolute ownership in the landholding—a right which then would have become fixed and established, and no longer open to doubt or controversy.[82]

We now examine the redemption made by petitioners.

Under Section 12 of the RA 3844, the right of redemption is validly exercised upon compliance with the following requirements: (*a*) the redemptioner must be an agricultural lessee or share tenant; (*b*) the land must have been sold by the owner to a third party without prior written notice of the sale given to the lessee or lessees and the DAR; (*c*) only the area cultivated by the agricultural lessee may be redeemed; and (*d*) the right of redemption must be exercised within 180 days from written notice of the sale by the vendee.[83]

Jurisprudence instructs that tender or consignation is an indispensable requirement to the proper exercise of the right

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[78] G.R. No. 171961, November 28, 2008, 572 SCRA 681.

[79] DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR.

[80] *Dela Cruz v. Quiazon, supra* at 692-693.

[81] *Martillano v. Court of Appeals*, G.R. No. 148277, June 29, 2004, 433 SCRA 195, 204.

[82] *Pagtalunan v. Tamayo*, G.R. No. 54281, March 19, 1990, 183 SCRA 252, 259.

[83] *Perez v. Aquino, supra* note 48, at 588-589.

of redemption by the agricultural lessee.[84] **An offer to redeem is validly effected through: (*a*) a formal tender with consignation, or (*b*) a complaint filed in court coupled with consignation of the redemption price** within the prescribed period.[85] In making a repurchase, it is not sufficient that a person offering to redeem merely manifests his desire to repurchase. This statement of intention must be accompanied by an actual and simultaneous tender of payment of the full amount of the repurchase price, *i.e*., the consideration of the sale, **otherwise the offer to redeem will be held ineffectual**. In *Quiño v. CA*,[86] the Court explained the rationale for the consignation of the full amount of the redemption price:

> It is not difficult to discern why the *full* amount of the redemption price should be consigned in court. Only by such means can the buyer become certain that the offer to redeem is one made seriously and in good faith. A buyer cannot be expected to entertain an offer of redemption without the attendant evidence that the redemptioner can, and is willing to accomplish the repurchase immediately. A different rule would leave the buyer open to harassment by speculators or crackpots, as well as to unnecessary prolongation of the redemption period, contrary to the policy of the law in fixing a definite term to avoid prolonged and anti-economic uncertainty as to ownership of the thing sold. Consignation of the entire price would remove all controversies as to the redemptioner's ability to pay at the proper time. x x x[87]

Applying the foregoing, we find that petitioners did not validly exercise their right of redemption.

In this case, it is undisputed that petitioners are *bona fide* tenants of the original Santos property. A portion of that land was sold by an owner-heir, Jesus, to a third party, respondent Municipality, without any written notice of the sale to petitioners and the DAR. Albeit petitioners' right of redemption had long

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[84] *Estrella v. Francisco, supra* note 50.

[85] *Perez v. Aquino, supra* at 589.

[86] G.R. No. 118599, June 26, 1998, 291 SCRA 249.

[87] *Id.* at 257.

been sustained and upheld, it fell upon them to comply with the requirements for a valid and effective exercise of such right. Otherwise stated, the filing of the complaint should have been coupled with the consignation of the redemption price to show their willingness and ability to pay within the prescribed period.

In this regard, we agree with the CA's ruling that petitioners belatedly tendered payment and effected consignation of the redemption price of ₱1.2 million. Notably, petitioners filed on August 26, 1994 a Motion for Consignation of Reasonable Redemption Amount of only ₱2,300.00 for the 2,132.42 square meters landholding sold by Jesus to respondent Municipality.[88] The discrepancy between the amounts of ₱2,300.00 and ₱1.2 Million clearly calls to question petitioners' willingness and ability to pay.

Even if we liberally reckon the prescriptive period to tender payment of the redemption price from the date when the original ruling of the PARAD became final and executory on November 27, 2003, petitioners still belatedly tendered and consigned payment of the redemption price, on May 9 and 10, 2006, respectively, way beyond the 180-day prescriptive period provided by law.[89]

Considering that petitioners failed to consign the full redemption price of ₱1.2 Million when they filed the complaint before the PARAD in August 22, 1994, there was no valid exercise of the right to redeem the property. It bears stressing that the right of redemption under Section 12 of RA 3844, as amended, is an essential mandate of the agrarian reform legislation to implement the State's policy of owner-cultivatorship and to achieve a dignified, self-reliant existence for small farmers. Such laudable and commendable policy, however, is never intended to unduly transgress the corresponding rights of purchasers of land.[90] Consequently, petitioners cannot redeem the property and gain its ownership.

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[88] *Rollo*, p. 85.

[89] *Id.* at 68.

[90] *Perez v. Aquino, supra* note 48, at 590-591.

We are not unaware that the new owner, respondent Municipality, is bound to respect and maintain petitioners as tenant of the property because of the latter's tenancy right attached to the land regardless of who the owner may be.[91] Under the law, the existence of an agricultural leasehold relationship is not terminated by changes in ownership in case of sale, as in this case, since the purpose of the law is to strengthen the security of tenure of tenants.[92]

However, the following circumstances prevent our recognition of petitioners' continued (tenancy) possession and cultivation of the property:

1. As of 1991, respondent Municipality entered into the property and began construction of the public market. As possessors-tenants of the property, petitioners became, or ought to have been immediately, aware of the respondent Municipality's entry which perforce must have caused their dispossession.

2. Amendments to Section 12 of RA 3844 shortened the period of redemption to 180 days in order to immediately settle all questions of ownership to the land.[93] Stacked against the law and these facts, we are baffled by petitioners' silence and inaction to tender or consign the exact redemption price for an unreasonable length of time.

3. Corollary to paragraph 2, private respondents have alleged, which petitioners failed to refute, that the latter have instead collected rentals from them for the use of the market stalls.[94] We view this as acquiescence to the reclassification of the property as commercial and to respondent Municipality's ownership and possession. Palpable from the records is that

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[91] *Estrella v. Francisco, supra* note 50.

[92] *Planters Development Bank v. Garcia*, G.R. No. 147081, December 9, 2005, 477 SCRA 185, 195.

[93] *Estrella v. Francisco, supra.*

[94] See Motion for Reconsideration filed by private respondents of the August 23, 2006 Resolution of the PARAD; *rollo*, pp. 139-140.

petitioners have not been cultivating that portion of the property contrary to their posturing to redeem it.

4. Indeed, the lots surrounding the original Santos property have been classified as commercial since 1989. The respondent Municipality has consistently asserted that the actual amount it expended on the construction of the public market is ₱6 Million. It has proffered this amount as the redemption price.

5. Lastly, the undeniable public use of the property.

On the whole, petitioners cannot gain possession and continue tenancy of the property which is undeniably devoted to public use.

As far back as *Manila Railroad Company v. Paredes*,[95] we have held that a registered owner may be precluded from recovering possession of his property and denied remedies usually afforded to him against usurpers, because of the irremediable injury which would result to the public in general. In that case, a registered owner failed to recover possession of the litigated property and the Court made a factual finding that the land owner acquiesced to petitioner Manila Railroad Company's occupation of the land.[96]

Fairly recent, in *Forfom Development Corporation v. Philippine National Railways*,[97] citing *Manila Railroad Company v. Paredes*, we again disallowed recovery of possession of the property by the landowner on grounds of estoppel and, more importantly, of public policy which imposes upon the public utility the obligation to continue its services to the public. We ruled that Forfom consented to the taking of its land when it negotiated with PNR knowing fully well that there was no expropriation case filed at all.[98]

Our holding that the property has been devoted to public use and cannot be appropriated and possessed by petitioners is

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[95] 32 Phil. 534 (1915).

[96] *Id.* at 540.

[97] G.R. No. 124795, December 10, 2008, 573 SCRA 341.

[98] *Id.* at 366-367.

unavoidable. The reclassification and public use of the property were recognized in the PARAD's original ruling in DARAB Case No. 739-Bulacan '94, quoting respondent Municipality's arguments in its Answer:

> That since the year 1989 when our first public market was constructed in the Poblacion from the CDF of Congressman Vicente Rivera, the lots surrounding it, including the property of the heirs of Simeon delos Santos, became a commercial area, thus, the increase in valuation of said lots;
>
> That the reclassification of the agricultural lots surrounding our public market into commercial purposes had been approved by the Sangguniang Bayan, pursuant to Section 20, chapter 2, Book I, RA 7160, for as a consequence of the establishment of our public market, the said lots gained substantial increase in economic value;
>
> That in as much that a certificate of ownership of the lot on which to construct our public market is required before our application for loan could be approved, this Office submitted to the Minute II Fringe Program Office, the Deed of Absolute Sale (Exhibit "A") executed by the Spouses Jesus Santos and Simplicio Pablo in favor of the Municipality of Bustos, Bulacan;
>
> That with the release of [the] loan, construction of the public market which commenced in 1993 and was completed in July[] 1994, with its blessing and inauguration held last August 18, 1994;[99]

Thus, in *De Guzman v. Court of Appeals*,[100] we took into consideration the municipality's zoning ordinance identifying the land as commercial notwithstanding petitioners' continued tillage, and the municipality's failure to successfully realize the commercial project.

By contrast, petitioners are not registered owners, but possessors who ought to be in continuous cultivation and possession of the property. Their belated and ineffective redemption of the property, coupled with their collection of rentals from private respondents, speaks volumes of their acquiescence to the classification and public use of the property.

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[99] *Rollo*, p. 84.

[100] G.R. No. 156965, October 12, 2006, 504 SCRA 238.

In fact, petitioners awaited inauguration of the public market before they filed suit against respondent Municipality to recover possession of the property. During construction of the public market for more than a year, petitioners did not appear to question their dispossession from the property.

Nonetheless, as valid tenants-possessors of the property, petitioners are entitled to disturbance compensation under Section 36 (1)[101] of RA 3844, as amended. We remand this case to the DARAB for determination of disturbance compensation due petitioners reckoned from the time of their actual dispossession from the property. The DARAB, through the PARAD, shall conduct a hearing and receive evidence from both petitioners and the respondent Municipality to determine the amount of disturbance compensation, and the amount of rentals allegedly collected by petitioners from the vendors in the public market, if any.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals in CA-G.R. SP No. 108859 is **AFFIRMED**. The Department of Agrarian Reform Adjudication Board in DARAB Case No. 749-Bulacan '94 is directed to compute the amount of disturbance compensation to be paid petitioners Teddy Castro and Lauro Sebastian by public respondent Municipality of Bustos, Bulacan in accordance with the provisions of Republic Act No. 3844, as amended. No costs.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Reyes, and *Tijam, JJ.*, concur.

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[101] Sec. 36. *Possession of Landholding; Exceptions* — Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

(1) The landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some other urban purposes: *Provided*, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five times the average of the gross harvests on his landholding during the last five preceding calendar years; x x x

SECOND DIVISION

[G.R. No. 213486. April 26, 2017]

EDITHA M. CATOTOCAN, *petitioner, vs.* **LOURDES SCHOOL OF QUEZON CITY, INC./LOURDES SCHOOL, INC. and REV. FR. CESAR F. ACUIN, OFM CAP, RECTOR,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; RETIREMENT; THE RETIREMENT AGE IS PRIMARILY DETERMINED BY THE EXISTING AGREEMENT OR EMPLOYMENT CONTRACT, AND IN THE ABSENCE THEREOF, THE RETIREMENT AGE IS FIXED BY LAW, WHICH PROVIDES FOR A COMPULSORY RETIREMENT AGE AT 65 YEARS, WHILE THE MINIMUM AGE FOR OPTIONAL RETIREMENT IS SET AT 60 YEARS.— Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former. Article 287 of the Labor Code is the primary provision which governs the age of retirement x x x. Under this provision, the retirement age is primarily determined by the existing agreement or employment contract. Only in the absence of such an agreement shall the retirement age be fixed by law, which provides for a compulsory retirement age at 65 years, while the minimum age for optional retirement is set at 60 years.

2. ID.; ID.; ID.; RETIREMENT PLANS ALLOWING EMPLOYERS TO RETIRE EMPLOYEES WHO HAVE NOT YET REACHED THE COMPULSORY RETIREMENT AGE OF 65 YEARS ARE NOT *PER SE* REPUGNANT TO THE CONSTITUTIONAL GUARANTY OF SECURITY OF TENURE, AS THE EMPLOYERS AND EMPLOYEES ARE PERMITTED TO FIX THE APPLICABLE RETIREMENT AGE AT 60 YEARS OR BELOW, PROVIDED THE EMPLOYEES' RETIREMENT BENEFITS UNDER ANY COLLECTIVE BARGAINING AGREEMENT AND OTHER AGREEMENTS SHALL NOT

BE LESS THAN THOSE PROVIDED IN THE LABOR CODE.— Jurisprudence is replete with cases discussing the employer's prerogative to lower the compulsory retirement age subject to the consent of its employees. In *Pantranco North Express, Inc. v. NLRC,* the Court upheld the retirement of the private respondent therein pursuant to a CBA allowing the employer to compulsorily retire employees upon completing 25 years of service to the company. Interpreting Article 287, the Court held that the Labor Code permits employers and employees to fix the applicable retirement age lower than 60 years of age. Thus, retirement plans, as in LSQC's retirement plan, allowing employers to retire employees who have not yet reached the compulsory retirement age of 65 years are not *per se* repugnant to the constitutional guaranty of security of tenure. By its express language, the Labor Code permits employers and employees to fix the applicable retirement age at 60 years or below, provided that the employees' retirement benefits under any CBA and other agreements shall not be less than those provided therein.

3. **ID.; ID.; ID.; WHILE AN EMPLOYER MAY UNILATERALLY RETIRE AN EMPLOYEE EARLIER THAN THE LEGALLY PERMISSIBLE AGES UNDER THE LABOR CODE, THIS PREROGATIVE MUST BE EXERCISED PURSUANT TO A MUTUALLY INSTITUTED EARLY RETIREMENT PLAN.—** Indeed, acceptance by the employees of an early retirement age option must be explicit, voluntary, free, and uncompelled. While an employer may unilaterally retire an employee earlier than the legally permissible ages under the Labor Code, this prerogative must be exercised pursuant to a mutually instituted early retirement plan. In other words, only the implementation and execution of the option may be unilateral, but not the adoption and institution of the retirement plan containing such option. However, We already had the occasion to strike down the added requirement that an employer must first consult its employee prior to retiring him, as this requirement unduly constricts the exercise by management of its option to retire the said employee. Due process only requires that notice of the employer's decision to retire an employee be given to the employee.

4. **ID.; ID.; ID.; PETITIONER CONSENTED AND RATIFIED HER RETIREMENT IN ACCORDANCE WITH HER**

EMPLOYER'S RETIREMENT POLICY.— [T]he CA and the NLRC did not gravely abuse its discretion in finding that LSQC did not illegally dismiss Catotocan from service. While it may be true that Catotocan was initially opposed to the idea of her retirement at an age below 60 years, it must be stressed that Catotocan's subsequent actions after her "retirement" are actually tantamount to her consent to the addendum to the LSQC's retirement policy of retiring her from service upon serving the school for at least thirty (30) continuous years x x x. We also did not find an *iota* of evidence showing that LSQC exerted undue influence against Catotocan to acquire her consent on the school's retirement policy. Suffice it to say that x x x, Catotocan performed all the acts to ratify her retirement in accordance with LSQC's retirement policy.

5. **ID.; ID.; ID.; ALTHOUGH THE COURT HAS, MORE OFTEN THAN NOT, BEEN INCLINED TOWARDS THE PLIGHT OF THE WORKERS AND HAS UPHELD THEIR CAUSE IN THEIR CONFLICTS WITH THE EMPLOYERS, SUCH INCLINATION HAS NOT BLINDED IT TO THE RULE THAT JUSTICE IS IN EVERY CASE FOR THE DESERVING, TO BE DISPENSED IN THE LIGHT OF THE ESTABLISHED FACTS AND APPLICABLE LAW AND DOCTRINE.—** [T]he ruling in *Cercado and Jaculbe* cannot be applied to this case, simply because in those cases, there was no subsequent express acknowledgment of "retirement" which is present in this case. It must be stressed also that Catotocan's repeated application and availment of the re-hiring program of LSQC for qualified retirees for 3 consecutive years is a supervening event that would reveal that she has already voluntarily and freely signified her consent to the retirement policy despite her initial opposition to it. Moreover, in contrast, in the *Cercado case,* Cercado was consistent in not giving her consent to the retirement plan of her employer as in fact she refused the check representing her retirement benefits; in this case, however, not only did Catotocan received all of her retirement benefits but she also applied and availed the LSQC's re-hiring policy of retirees. Although the Court has, more often than not, been inclined towards the plight of the workers and has upheld their cause in their conflicts with the employers, such inclination has not blinded it to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.

APPEARANCES OF COUNSEL

Cezar F. Maravilla, Jr. for petitioner.
Faustino R. Madriaga, Jr. for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated October 29, 2013 and Resolution[2] dated July 15, 2014 of the Court of Appeals in CA-G.R. SP No. 120117, which dismissed the Petition for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure filed by Editha M. Catotocan, and affirmed the October 20, 2010[3] and May 13, 2011[4] Orders of the National Labor Relations Commission.

The facts, as culled from the records, are as follows:

In 1971, Editha Catotocan (*Catotocan*) started her employment in Lourdes School of Quezon City (*LSQC*) as music teacher with a monthly salary of Thirty Thousand and Eighty-One Philippine Pesos (Php30,081.00). By the school year 2005-2006, she had already served for thirty-five (35) years.

LSQC has a retirement plan providing for retirement at sixty (60) years old, or separation pay depending on the number of years of service.

On November 25, 2003, LSQC issued Administrative Order No. 2003-004 for all employees which is an addendum on its

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[1] *Rollo,* pp. 36-49; penned by Associate Justice Ramon A. Cruz, with the concurrence of Associate Justices Ricardo R. Rosario and Romeo F. Barza.

[2] *Id.* at 51-52.

[3] *Id.* at 54-62.

[4] CA *rollo*, pp. 47-50.

retirement policy. The portion on Normal Retirement reads, as follows:

x x x x x x x x x

NORMAL RETIREMENT:

1. An employee may apply for retirement or be retired by the school when he /she reaches the age of sixty (60) years or when he/she completes thirty (30) years of service, whichever comes first;

x x x x x x x x x[5]

In a Letter[6] dated March 23, 2004, Catotocan and seven (7) other co-employees wrote to the Provincial Minister, Provincial Council on Education of LSQC and appealed for the deferment of the implementation of the November 25, 2003 Addendum to the retirement plan, particularly the provision that normal retirement will commence after completing "30 years of service" to the school. They, likewise, requested the priest of the Capuchin Order who were running the school to allow them to retire when they have reached 60 years of age instead so that they can "fully enjoy the fruits" of their labor.

In a Reply[7] to the Letter, dated April 25, 2004, LSQC Provincial Minister and Chairman of the Board of Trustees Fr. Troadio de los Santos informed them that the contested retirement age was the same as provided in the retirement plans of other schools.

In a Letter[8] dated September 3, 2004, Catotocan, among other employees, wrote once more to the Provincial Minister and informed him that they have conducted a survey among other private schools' retirement plans and the retirement age is sixty years old regardless of the length of service. They believed that they do not deserve to be retired and be rehired when they

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[5] *Id*. at 91.

[6] *Id*. at 93.

[7] *Id*. at 95.

[8] *Id.* at 96.

are, in fact, very much capable of doing their duties and responsibilities.

On October 12, 2004, Fr. Troadio de los Santos informed them that since there is a pending case before the Arbitration Branch of the NLRC entitled "*Tiongson v. Lourdes School, Quezon City, et al."* docketed as NLRC NCR Case No. 00-04-05164-04, it would be best if they just wait for the final determination of the case by the appropriate tribunal.

On October 26, 2004, Catotocan and her co-employees sought the intervention of the Department of Labor and Employment-National Capital Region (*DOLE-NCR*). Their concerns were referred to Atty. Jose Mari Villaflor, Chief Public Assistance and Complaints Unit (*PACU*) Officer. A meeting between Catotocan and the teachers affected by the 30-year service retirement clause, and the school rector and treasurer ensued on November 22, 2004. During the said meeting, one of the complainants asked Atty. Villaflor if the school can compel them to retire and Atty. Villaflor advised that doing so will be tantamount to constructive dismissal. The meeting was re-scheduled to January 7, 2005, but the school officials no longer attended.

However, in a Letter[9] dated January 27, 2005, LSQC Rector Fr. Cesar Acuin (*Fr. Acuin*) notified Catotocan that she will be retired by the end of the school year for having served at least thirty (30) years with accompanying computation of her retirement pay in the total amount of One Million Fifty-Two Thousand Eight Hundred Thirty-Five Philippine Pesos (Php 1,052,835.00). At the time the said letter was served on Catotocan, she was fifty-six (56) years old.

On March 3, 2005, a dialogue with Fr. Luis Arrieta and the concerned employees took place wherein the latter expressed their objections to the 30-year service requirement for retirement.

LSQC retired Catotocan sometime in June 2006 after completing thirty-five (35) years of service. Full retirement

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[9] *Id*. at 117-118.

benefits were given to her computed based on the latest salary multiplied by the total years of service. Under the school's retirement policy, sixty percent (60%) of her retirement benefit was paid in lump sum by the trustee bank, and the balance was to be paid in equal monthly pensions over the next three (3) years. The trustee bank holding the retirement portfolio of LSQC was Banco De Oro (*BDO*).

On May 20, 2006, LSQC Treasurer, Fr. Rolando Brines, sent to the Senior Manager of BDO a letter requesting the release of 60% of the retirement benefit to the retirees through their individual savings account on June 1, 2006. Catotocan was thus credited with thirty-five (35) years of service and her total retirement benefit amounted to One Million Fifty-Two Thousand Eight Hundred Thirty-Five Philippine Pesos (Php1,052.835.00). Sixty percent (60%) of that amount, or Five Hundred Seventy-One Thousand Seven Hundred and One Philippine Pesos (Php571,701.00) was credited to her savings account, which she opened in accordance with the school's retirement policy. The remaining forty percent (40%) in the amount of Four Hundred Twenty-One Thousand One Hundred and Thirty-Four Philippine Pesos (Php421,134.00) was divided into thirty-six (36) equal monthly installments of Eleven Thousand Six Hundred Ninety-Eight Philippine Peso and 17/100 (Php11,698.17) each and credited to Catotocan's savings account until June 2009.

Catotocan's retirement, effective June 2006, was communicated to her on January 27, 2006. In the same letter, Catotocan was told that if she desires, she may signify in writing her intent to continue serving the school on a contractual basis. She responded by submitting a "Letter of Intent" on February 14, 2006.[10]

On May 11, 2006, LSQC appointed Catotocan as a Grade School Guidance Counselor for the school year 2006-2007 under a contractual status effective June 1, 2006 until March 31, 2007.[11]

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[10] *Id.* at 119.

[11] *Id.* at 120.

On August 16, 2006, Catotocan, together with other "retirees" who were re-hired, wrote the LSQC Rector to request that they be included in the Valucare Health Maintenance Plan of the school, under the scheme that they will shoulder the cost of the health plan through salary deduction.[12] The Rector, Fr. Acuin, granted the request.[13]

The following school year, Catotocan re-applied for the position of Guidance Counselor. This was granted by the LSQC Rector in his Letter dated March 23, 2007 wherein Catotocan was appointed as Grade School Guidance Counselor for Grades 5 and 6 effective June 1, 2007 until March 31, 2008.

Again, on February 15, 2008, Catotocan re-applied as Guidance Counselor for school year 2008-2009.[14] On April 9, 2008, LSQC appointed her to the same post effective May 12, 2008 until April 3, 2009.[15]

In a Letter[16] dated January 29, 2009, Catotocan re-applied for the position of GS Guidance Counselor, but LSQC no longer considered her application for the position.

On June 25, 2009, before the Labor Arbiter, Catotocan filed a complaint docketed as NLRC-NCR-Case No. 06-09340-2009 for illegal dismissal and monetary claims such as claim for step increment, moral and exemplary damages and attorney's fees.[17]

On March 26, 2010, in a Decision,[18] the Labor Arbiter dismissed Catotocan's complaint for lack of merit. The Labor Arbiter pointed out that, although there were exchanges of

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[12] *Id.* at 121.

[13] *Id.* at 122.

[14] *Id.* at 123.

[15] *Id.* at 126.

[16] *Id.* at 127.

[17] *Id.* at 63-65.

[18] *Id.* at 165-173.

communications between her and respondents regarding her earlier opposition to the school's retirement policy, her subsequent actions, however, such as opening her own individual savings account where the retirement benefits were deposited and credited thereto, her subsequent withdrawals therefrom, her application for contractual employment after her retirement, constituted implied consent to the assailed addendum in LSQC's retirement policy and, in effect, abandoned her objection thereto.

On appeal, on October 20, 2010,[19] the NLRC affirmed the Labor Arbiter's decision. The NLRC held that Catotocan performed all the acts that a retired employee would do after retirement under the new school policy. These were voluntary acts and she cannot be considered to have been forced to retire or to have been illegally dismissed.

Catotocan moved for reconsideration, but the same was denied in a Resolution dated May 13, 2011.

Dissatisfied, Catotocan filed a petition for *certiorari* before the Court of Appeals.

In the disputed Decision[20] dated October 29, 2013, the Court of Appeals dismissed the petition for lack of merit. The NLRC Decision dated October 20, 2010 and Resolution dated May 13, 2011 were affirmed. The appellate court agreed that while Catotocan was initially opposed to the idea of her retirement at an age below 60 years, her subsequent actions, however, after her retirement are tantamount to consent to the addendum to the school's retirement policy of retiring from service upon serving the school for at least thirty (30) continuous years.

Hence, this appeal anchored on the following grounds:

I

WHETHER THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT APPLYING THE PRINCIPLE OF STARE

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[19] *Id.* at 54-61.

[20] *Supra* note 1.

DECISIS, THERE BEING A PRIOR DECISION ALREADY ON SIMILAR CASE INVOLVING THE LOURDES SCHOOL AND THE SAME ISSUE OF FORCED RETIREMENT BEFORE THE AGE OF SIXTY (60);

II

WHETHER THE COURT OF APPEALS' FINDING THAT PETITIONER RETIRED BY ACQUIESCENCE OR BY IMPLICATION, WHEN SHE OPENED A BANK ACCOUNT TO RECEIVE HER RETIREMENT BENEFITS AFTER 30 YEARS OF SERVICE BUT BEFORE AGE 60, AND ACCEPTING FOR 3 YEARS CONTRACTUAL EMPLOYMENT IS CONTRARY TO THE JACULBE CASE AND THE COURT DOCTRINE IN *LOURDES A. CERCADO VS. UNIPROM, INC.*, WHERE IT WAS HELD THAT ASSENT TO EARLY RETIREMENT BEFORE THE AGE OF 60 IS VALID ONLY IF EXPRESSLY GIVEN AND NOT BY IMPLIED ACTS AS ACCEPTANCE OF RETIREMENT PAY, AND WILL NOT BAR TO THE PURSUIT OF AN ILLEGAL DISMISSAL CASE;

III

WHETHER ESTOPPEL WILL APPLY AFTER THE ACCEPTANCE OF RETIREMENT PAY AND WILL OPERATE TO WAIVE THEIR LEGAL RIGHT TO CONTEST HER ILLEGAL DISMISSAL.

In a nutshell, Catotocan asserts that her receipt of her retirement benefits will not stop her from pursuing an illegal dismissal complaint against LSQC.

We deny the petition.

Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former. Article 287 of the Labor Code is the primary provision which governs the age of retirement and states:

Art. 287. Retirement. x x x

x x x x x x x x x

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee

upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.
(Emphasis Supplied)

Under this provision, the retirement age is primarily determined by the existing agreement or employment contract. Only in the absence of such an agreement shall the retirement age be fixed by law, which provides for a compulsory retirement age at 65 years, while the minimum age for optional retirement is set at 60 years.[21]

Jurisprudence is replete with cases discussing the employer's prerogative to lower the compulsory retirement age subject to the consent of its employees. In *Pantranco North Express, Inc. v. NLRC,*[22] the Court upheld the retirement of the private respondent therein pursuant to a CBA allowing the employer to compulsorily retire employees upon completing 25 years of service to the company. Interpreting Article 287, the Court held that the Labor Code permits employers and employees to fix the applicable retirement age lower than 60 years of age.[23]

Thus, retirement plans, as in LSQC's retirement plan, allowing employers to retire employees who have not yet reached the compulsory retirement age of 65 years are not *per se* repugnant to the constitutional guaranty of security of tenure. By its express language, the Labor Code permits employers and employees to fix the applicable retirement age at 60 years or below, provided that the employees' retirement benefits under any CBA and other agreements shall not be less than those provided therein.[24]

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[21] *Banco De Oro Unibank , Inc. v. Sagaysay*, G.R. No. 214961, September 16, 2015, 771 SCRA 68, 78.

[22] 328 Phil. 470 (1996).

[23] *Pantranco North Express, Inc. v. NLRC*, *supra.*

[24] *Id.*

Indeed, acceptance by the employees of an early retirement age option must be explicit, voluntary, free, and uncompelled. While an employer may unilaterally retire an employee earlier than the legally permissible ages under the Labor Code, this prerogative must be exercised pursuant to a mutually instituted early retirement plan. In other words, only the implementation and execution of the option may be unilateral, but not the adoption and institution of the retirement plan containing such option.[25] However, We already had the occasion to strike down the added requirement that an employer must first consult its employee prior to retiring him, as this requirement unduly constricts the exercise by management of its option to retire the said employee. Due process only requires that notice of the employer's decision to retire an employee be given to the employee.[26]

Here, the CA and the NLRC did not gravely abuse its discretion in finding that LSQC did not illegally dismiss Catotocan from service. While it may be true that Catotocan was initially opposed to the idea of her retirement at an age below 60 years, it must be stressed that Catotocan's subsequent actions after her "retirement" are actually tantamount to her consent to the addendum to the LSQC's retirement policy of retiring her from service upon serving the school for at least thirty (30) continuous years, to wit: (1) after being notified that she was being retired from service by LSQC, she opened a savings account with BDO, the trustee bank; (2) she accepted all the proceeds of her retirement package: the lump sum and all the monthly payments credited to her account until June 2009; (3) upon acceptance of the retirement benefits, there was no notation that she is accepting the retirement benefits under protest or without prejudice to the filing of an illegal dismissal case. We also did not find an *iota* of evidence showing that LSQC exerted undue influence against Catotocan to acquire her consent on the school's retirement policy. Suffice it to say that from the foregoing,

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[25] *Id.*

[26] *PAL, Inc. v. Airline Pilots Association of the Philippines*, 424 Phil. 356, 365 (2002).

Catotocan performed all the acts to ratify her retirement in accordance with LSQC's retirement policy.

We, likewise, quote the NLRC's finding that Catotocan's subsequent actions after LSQC implemented the retirement program as to negate her allegation of illegal dismissal. We quote:

> As cleared during the dialogue with Father [Arieta], if an employee is retired against her/his will, the trustee bank would not allow the release of the trust fund to the employee. Clearly, appellant's retirement pay was released to her up to the last centavo. She opened a savings account with BDO for the purpose, withdrew the money, applied for re-appointment and received salaries therefore. In doing so, she performed all the acts that a retired employee would do after retirement under the new school policy. In view of her voluntary acts and enjoyment of the monetary benefits in accordance with the school's new retirement plan, We cannot consider her to have been forced to retire or illegally dismissed.
>
> Although there was an exchange of communications about the retirees' objection to the new retirement policy years earlier, eventually, appellant assented thereto when she opened a savings account with BDO, withdrew the money for her personal use and applied again for a teaching job with the school.
>
> While it is true that the acceptance of retirement pay and her eventual appointment as Guidance Counselor did not amount to a waiver to contest her alleged forced retirement or illegal dismissal, the voluntary nature of her acts from June 2006 up to June 2009 clearly belies her claim of illegal dismissal.
>
> Obviously, appellant filed this complaint claiming illegal dismissal after she had benefited from the proceeds of her retirement in June 2006, and received salaries as Guidance Counselor of the appellee school for the subsequent three (3) years which ended in 2009. By her actuations, she is already estopped from questioning the legality of the new retirement policy.
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> x x x x x x x x x[27]

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[27] *Rollo*, pp. 59-60.

Indeed, the most telling detail indicative of Catotocan's voluntary assent to LSQC's retirement policy was her correspondence with the latter following her "retirement." In particular, in her Letter[28] dated January 27, 2005, Catotocan availed of the privilege of being re-hired after retirement by virtue of the "*Contractual Employment of Retired Employees*" provision of LSQC's retirement policy. It must be emphasized that the re-hiring was exclusive *only for those employees who has availed of the retirement benefits or who has been retired by the school but who has not yet reached 65 years of age.* Thus, since Catotocan has availed of this contractual employment which is exclusively offered only to LSQC's qualified retirees for three (3) consecutive years following her retirement, she can no longer dispute that she has indeed legitimately retired from employment, and was not illegally dismissed.

Moreover, in the Letter dated August 6, 2006 addressed to Fr. Acuin, Catotocan, along with other co-employees, referred to themselves as "retirees" and even signed as "the retired employees." The context of the letter does not, in any way, show any animosity with LSQC which would otherwise indicate that they still harbor ill feelings towards LSQC due to their alleged illegal dismissal. Thus, We hold that Catotocan's filing of the illegal dismissal case was just an afterthought subsequent to LSQC's denial of her fourth re-application for the Guidance Counselor position.

Finally, the ruling in *Cercado*[29] *and Jaculbe*[30] cannot be applied to this case, simply because in those cases, there was no subsequent express acknowledgment of "retirement" which is present in this case. It must be stressed also that Catotocan's repeated application and availment of the re-hiring program of LSQC for qualified retirees for 3 consecutive years is a supervening event that would reveal that she has already

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[28] *Id.* at 88-89.

[29] *Cercado v. UNIPROM*, 647 Phil. 603 (2010).

[30] *Jaculbe v. Silliman University,* 547 Phil. 352 (2007).

voluntarily and freely signified her consent to the retirement policy despite her initial opposition to it. Moreover, in contrast, in the *Cercado case,* Cercado was consistent in not giving her consent to the retirement plan of her employer as in fact she refused the check representing her retirement benefits; in this case, however, not only did Catotocan received all of her retirement benefits but she also applied and availed the LSQC's re-hiring policy of retirees.

Although the Court has, more often than not, been inclined towards the plight of the workers and has upheld their cause in their conflicts with the employers, such inclination has not blinded it to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.[31]

WHEREFORE, premises considered, the Decision dated October 29, 2013 and the Resolution dated July 15, 2014 of the Court of Appeals in CA-G.R. SP No. 120117 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Mendoza, Leonen,* and *Martires, JJ.,* concur.

SECOND DIVISION

[G.R. No. 214925. April 26, 2017]

JOHN LABSKY P. MAXIMO and ROBERT M. PANGANIBAN, *petitioners, vs.* **FRANCISCO Z. VILLAPANDO, JR.** *respondent.*

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[31] *Philippine Transmarine Carriers, Inc. v. Legaspi*, 710 Phil. 838, 850 (2013).

[G.R. No. 214965. April 26, 2017]

FRANCISCO Z. VILLAPANDO, JR., *petitioner, vs.* **MAKATI CITY PROSECUTION OFFICE, JOHN LABSKY P. MAXIMO and ROBERT M. PANGANIBAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; COMPLAINTS OR INFORMATIONS FILED BEFORE THE COURTS WITHOUT THE PRIOR WRITTEN AUTHORITY OR APPROVAL OF THE PROVINCIAL OR CITY PROSECUTOR OR CHIEF STATE PROSECUTOR OR THE OMBUDSMAN OR HIS DEPUTY RENDER THE SAME DEFECTIVE AND, THEREFORE, SUBJECT TO QUASHAL.— Section 4, Rule 112 of the 2000 Revised Rules on Criminal Procedure states that the filing of a complaint or information requires a prior written authority or approval of the named officers therein before a complaint or information may be filed before the courts, *viz.*: Section 4. *Resolution of investigating prosecutor and its review* x x x. **No** complaint or **information may be filed** or dismissed by an investigating prosecutor **without the prior written authority or approval of the** provincial or **city prosecutor** or chief state prosecutor or the Ombudsman or his deputy. x x x Thus, as a general rule, complaints or informations filed before the courts without the prior written authority or approval of the foregoing authorized officers render the same defective and, therefore, subject to quashal pursuant to Section 3 (d), Rule 117 of the same Rules.

2. ID.; ID.; ID.; ID.; THERE MUST BE A DEMONSTRATION THAT PRIOR WRITTEN DELEGATION OR AUTHORITY WAS GIVEN BY THE CITY PROSECUTOR TO THE ASSISTANT CITY PROSECUTOR TO APPROVE THE FILING OF THE INFORMATION.— In the cases of *People v. Garfin*, *Turingan v. Garfin*, and *Tolentino v. Paqueo*, this Court had already rejected similarly-worded certifications uniformly holding that, despite such certifications, the Informations were defective as it was shown that the officers filing the same in court either lacked the authority to do so or

failed to show that they obtained prior written authority from any of those authorized officers enumerated in Section 4, Rule 112 of the 2000 Revised Rules of Criminal Procedure. Therefore, there must be a demonstration that prior written delegation or authority was given by the city prosecutor to the assistant city prosecutor to approve the filing of the information. We have recognized this valid delegation of authority in the case of *Quisay v. People* x x x. In the case at bar, if indeed there was no proof of valid delegation of authority as found by the CA, We are constrained not to accord the presumption of regularity in the performance of official functions in the filing of the Amended Information.

3. ID.; ID.; ID.; ID.; THE FILING OF AN INFORMATION BY AN OFFICER WITHOUT THE REQUISITE AUTHORITY TO FILE THE SAME CONSTITUTES A JURISDICTIONAL INFIRMITY WHICH CANNOT BE CURED BY SILENCE, WAIVER, ACQUIESCENCE, OR EVEN BY EXPRESS CONSENT.— [W]e find untenable the argument of Maximo and Panganiban that the issuance of the Order dated February 21, 2012, bearing the signature of the City Prosecutor, denying Villapando's Partial Motion for Reconsideration, in effect, affirmed the validity of the Information filed. The case of *People v. Garfin*, firmly instructs that the filing of an Information by an officer without the requisite authority to file the same constitutes a jurisdictional infirmity which cannot be cured by silence, waiver, acquiescence, or even by express consent. In the said case, We lift the ruling in *Villa v. Ibañez, et al.*: x x x Now, the objection to the respondent's actuations goes to the very foundation of the jurisdiction. It is a valid information signed by a competent officer which, among other requisites, confers jurisdiction on the court over the person of the accused and the subject matter of the accusation. In consonance with this view, an infirmity in the information cannot be cured by silence, acquiescence, or even by express consent. An Information, when required by law to be filed by a public prosecuting officer, cannot be filed by another. The court does not acquire jurisdiction over the case because there is a defect in the Information. There is no point in proceeding under a defective Information that could never be the basis of a valid conviction.

4. ID.; ID.; MOTION TO QUASH; THE DENIAL OF A MOTION TO QUASH IS AN INTERLOCUTORY ORDER AND IS

NOT APPEALABLE; NEITHER CAN IT BE A PROPER SUBJECT OF A PETITION FOR *CERTIORARI* WHICH CAN BE USED ONLY IN THE ABSENCE OF AN APPEAL OR ANY OTHER ADEQUATE, PLAIN AND SPEEDY REMEDY, THE PLAIN AND SPEEDY REMEDY UPON DENIAL OF AN INTERLOCUTORY ORDER IS TO PROCEED TO TRIAL.— In the usual course of procedure, a denial of a motion to quash filed by the accused results in the continuation of the trial and the determination of the guilt or innocence of the accused. If a judgment of conviction is rendered and the lower courts' decision of conviction is appealed, the accused can then raise the denial of his motion to quash not only as an error committed by the trial court but as an added ground to overturn the latter's ruling. In this case, Villapando did not proceed to trial but opted to immediately question the denial of his motion to quash *via* a special civil action for *certiorari* under Rule 65 of the Rules of Court. It is also settled that a special civil action for *certiorari* and prohibition is not the proper remedy to assail the denial of a motion to quash an information. The established rule is that when such an adverse interlocutory order is rendered, the remedy is not to resort forthwith to *certiorari* or prohibition, but to continue with the case in due course and, when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law. As a rule, the denial of a motion to quash is an interlocutory order and is not appealable; an appeal from an interlocutory order is not allowed under Section 1(c), Rule 41 of the Rules of Court. Neither can it be a proper subject of a petition for *certiorari* which can be used only in the absence of an appeal or any other adequate, plain and speedy remedy. The plain and speedy remedy upon denial of an interlocutory order is to proceed to trial.

5. ID.; ID.; ID.; DIRECT RESORT TO A SPECIAL CIVIL ACTION FOR *CERTIORARI* WHEN CONSIDERED AN APPROPRIATE REMEDY TO ASSAIL THE DENIAL OF A MOTION TO QUASH.— [A] direct resort to a special civil action for *certiorari* is an exception rather than the general rule, and is a recourse that must be firmly grounded on compelling reasons. However, on a number of occasions, We have recognized that in certain situations, *certiorari* is considered an appropriate remedy to assail an interlocutory order, specifically the denial of a motion to quash. We have recognized the propriety of the following exceptions: (a) when the court issued the order without

or in excess of jurisdiction or with grave abuse of discretion; (b) when the interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief; (c) in the interest of a more enlightened and substantial justice; (d) to promote public welfare and public policy; and (e) when the cases have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof. In grave abuse of discretion cases, *certiorari* is appropriate if the petitioner can establish that the lower court issued the judgment or order without or in excess of jurisdiction or with grave abuse of discretion, and the remedy of appeal would not afford adequate and expeditious relief. The petitioner carries the burden of showing that the attendant facts and circumstances fall within any of the cited instances. In the case at bar, We find that there was a compelling reason to justify a resort to a petition for *certiorari* against the Order of the METC. Villapando was able to show that the factual circumstances of his case fall under any of the above exceptional circumstances. The METC committed grave abuse of discretion in denying the motion to quash filed by Villapando.

6. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN PROPER; THE WRIT OF *CERTIORARI* SERVES TO KEEP AN INFERIOR COURT WITHIN THE BOUNDS OF ITS JURISDICTION OR TO PREVENT IT FROM COMMITTING SUCH A GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION, OR TO RELIEVE PARTIES FROM ARBITRARY ACTS OF COURTS WHICH COURTS HAVE NO POWER OR AUTHORITY IN LAW TO PERFORM.— [W]e recognize that the petition for *certiorari* filed by Villapando before the RTC was an original action whose resulting decision is a final order that completely disposed of the petition. Section 2, Rule 41 of the Rules of Court, states that cases decided by the RTC in the exercise of its original jurisdiction must be appealed to the CA. Nonetheless, We have allowed exceptions for good cause that could warrant the relaxation of the rule as in this case. [T]he RTC gravely abuse its discretion in dismissing the petition of Villapando thereby affirming the denial of his motion to quash before the METC. We note that Villapando's liberty was already in jeopardy with the continuation of the criminal proceedings against him such that a resort to a petition for *certiorari* is recognized. As a rule, *certiorari* lies when: (1) a

tribunal, board, or officer exercises judicial or quasi-judicial functions; (2) the tribunal, board, or officer has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. The writ of *certiorari* serves to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess or lack of jurisdiction, or to relieve parties from arbitrary acts of courts which courts have no power or authority in law to perform.

7. ID.; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; FORUM SHOPPING; WHEN PRESENT; THE FILING OF AN APPEAL WITH THE DEPARTMENT OF JUSTICE (DOJ) AS WELL AS THE FILING OF THE PETITION WITH THE COURT OF APPEALS WOULD NOT CONSTITUTE FORUM SHOPPING, AS THE FINDING OF THE DOJ WOULD NOT BE BINDING UPON THE COURTS.— Anent the issue on forum shopping, We held in the case of *Flores v. Secretary Gonzales, et al.* that there is no forum shopping when a petition is filed with the CA while another petition is pending with the DOJ Secretary x x x. The filing of an appeal with the DOJ as well as the filing of the petition with the CA would not constitute forum shopping for the reason that the finding of the DOJ would not be binding upon the courts. In other words, even if the DOJ recommends dismissal of the criminal case against petitioner, such resolution would merely be advisory, and not binding upon the courts. The DOJ ruling on the petition for review would not constitute as *res judicata* on the case at bar, neither can it conflict with resolution of the court on the propriety of dismissing the case. Forum shopping is the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another and possibly favorable opinion in another forum other than by appeal or the special civil action of *certiorari*. There can also be forum shopping when a party institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same and related causes and/or to grant the same or substantially the same reliefs on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.

8. ID.; CRIMINAL PROCEDURE; PROSECUTION OF CRIMINAL ACTIONS; THE PEOPLE OF THE PHILIPPINES MUST BE IMPLEADED AS RESPONDENT IN THE REGIONAL TRIAL COURT AND IN THE COURT OF APPEALS TO ENABLE THE PUBLIC PROSECUTOR OR SOLICITOR GENERAL TO COMMENT ON THE PETITIONS.— Section 5, Rule 110 of the Rules of Criminal Procedure states that all criminal actions are prosecuted under the direction and control of the public prosecutor. The prosecution of offenses is thus the concern of the government prosecutors. The purpose in impleading the People of the Philippines as respondent in the RTC and in the CA is to enable the public prosecutor or Solicitor General, as the case may be, to comment on the petitions, Evidently, in this case, the People was represented by the Makati City Prosecution Office before the RTC and by the Office of the Solicitor General before the CA and were duly furnished with copies of all pleadings.

9. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* WHILE A MOTION FOR RECONSIDERATION IS A CONDITION PRECEDENT TO THE FILING OF A PETITION FOR *CERTIORARI*, THE COURT HAS RECOGNIZED EXCEPTIONS TO THE REQUIREMENT AND CANNOT UNDULY UPHOLD TECHNICALITIES AT THE EXPENSE OF A JUST RESOLUTION OF THE CASE.— [W]e find in the negative the issue of whether the non-filing by Villapando of a motion for reconsideration of the RTC Decision is fatal to his petition for *certiorari*. While a motion for reconsideration is a condition precedent to the filing of a petition for *certiorari*, this Court has recognized exceptions to the requirement and cannot unduly uphold technicalities at the expense of a just resolution of the case. In addition, Section 6, Rule 1 of the Rules of Court provides that rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Thus, in several cases, this Court has ruled against the dismissal of petitions or appeals based solely on technicalities. Technicalities may be set aside when the strict and rigid application of the rules will frustrate rather than promote justice.

10. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; JUDICIAL REVIEW; THE COURT'S POWER OF REVIEW MAY BE AWESOME, BUT IT IS LIMITED TO ACTUAL CASES

AND CONTROVERSIES DEALING WITH PARTIES HAVING ADVERSELY LEGAL CLAIMS, TO BE EXERCISED AFTER FULL OPPORTUNITY OF ARGUMENT BY THE PARTIES, AND LIMITED FURTHER TO THE CONSTITUTIONAL QUESTION RAISED OR THE VERY *LIS MOTA* PRESENTED.— This Court's power of review may be awesome, but it is limited to actual cases and controversies dealing with parties having adversely legal claims, to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. An actual case or controversy involves a conflict of legal right, an opposite legal claim susceptible of judicial resolution. It is definite and concrete, touching the legal relations of parties having adverse legal interest; a real and substantial controversy admitting of specific relief. We agree with the argument proffered by the OSG that unless and until the City Prosecutor files a new information for perjury against Villapando, there would be no actual case to speak of and there would be no need for the court to resolve the issue regarding the nature of the violation of the provisions of P.D. No. 957. The resolution on whether Sections 17, 20 and 25 of P.D. No. 957 are continuing offenses would necessarily pre-empt the outcome of the trial before the proper court should an information be re-filed by the City Prosecutor.

APPEARANCES OF COUNSEL

Balgos Gumaru Faller Tan & Javier for petitioners.
Rico And Associates for Francisco Z. Villapando, Jr.
Office of the Solicitor General for public respondent.

D E C I S I O N

PERALTA, *J.*:

Before us are consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1]

[1] Penned by Associate Justice Noel G. Tijam (now a member of this Court), with Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio, concurring; *rollo* (G.R. No. 214925), pp. 38-58.

dated June 13, 2014, and Resolution[2] dated October 16, 2014 of the Court of Appeals (*CA*) in CA-G.R. SP No. 131085 which reversed the Decision[3] dated May 30, 2013 of the Regional Trial Court (*RTC*), Branch 150, Makati City in Special Civil Action No. 13-473. The RTC affirmed the Order[4] of the Metropolitan Trial Court (*METC*), Branch 67, Makati City denying the Motion to Quash filed by petitioner Francisco Z. Villapando, Jr. (*Villapando*).

The factual antecedents are as follows:

Villapando is the assignee of Enhanced Electronics and Communications Services, Inc. of Condominium Unit No. 2821 and parking slot at the Legazpi Place in Makati City. Petitioners John Labsky P. Maximo (*Maximo*) and Robert M. Panganiban (*Panganiban*) are Directors of ASB Realty Corporation (now, St. Francis Square Realty Corp.), the developer of the said condominium unit.[5]

On November 23, 2010, Villapando filed before the Office of the City Prosecutor of Makati City (*OCP-Makati*), a complaint[6] against Maximo and Panganiban and other directors/officers of ASB Realty Corp. (*ASB*) for Violation of Sections 17,[7] 20[8]

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[2] *Id*. at 59-62.

[3] Penned by Judge Elmo M. Alameda, *id*. at 132-141.

[4] *Rollo* (G.R. No. 214965), pp. 72-73.

[5] *Id*. at 39.

[6] *Id*. at 52-122.

[7] Section 17. *Registration*. All contracts to sell, deeds of sale and other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units, whether or not the purchase price is paid in full, shall be registered by the seller in the Office of the Register of Deeds of the province or city where the property is situated.

[8] Section 20. *Time of Completion.* Every owner or developer shall construct and provide the facilities, improvements, infrastructures and other forms of development, including water supply and lighting facilities, which are offered and indicated in the approved subdivision or condominium plans, brochures, prospectus, printed matters, letters or in any form of advertisement, within

and 25[9] of Presidential Decree (*P.D.*) No. 957, otherwise known as the *Subdivision and Condominium Buyer's Protective Decree*.

Villapando alleged in his complaint that there was failure on the part of Maximo and Panganiban and the other directors/ officers of ASB to comply with PD No. 957 relative to the registration of contracts to sell and deeds of sale (Sec. 17), time of completion (Sec. 20) and issuance of title (Sec. 25) with respect to the aforementioned condominium unit.

The said criminal complaint for Violation of Sections 17, 20 and 25 was dismissed by the OCP-Makati in its Resolution[10] dated July 12, 2011 on the ground that prior to the estimated date of completion of the condominium unit, ASB encountered liquidity problems and instituted a petition for rehabilitation with the Securities and Exchange Commission (*SEC*) which showed good faith on the part of ASB.[11]

On February 24, 2011, Maximo instituted a Complaint[12] for *Perjury, Incriminating Innocent Person and Unjust Vexation*

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one year from the date of the issuance of the license for the subdivision or condominium project or such other period of time as may be fixed by the Authority.

[9] Section 25. *Issuance of Title.* The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. No fee, except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith.

[10] *Rollo* (G.R. No. 214965), pp. 633-638.

[11] In an Order dated February 6, 2012, the MR to the July 12, 2011 Resolution was denied. A Petition for Review was likewise denied on February 6, 2012. In the Resolution (*Rollo,* G.R. No. 214965, pp. 639-646) dated December 12, 2014 affirming the previous rulings of the DOJ Prosecutors, the DOJ Secretary held that the complaint had prescribed because it was filed after the 12-year prescriptive period from the time of the violation.

[12] *Rollo* (G.R. No. 214965), pp. 124-134.

against Villapando docketed as NPS-No. XV-05-INV-11-B-00509. The complaint was assigned to Assistant City Prosecutor (*ACP*) Evangeline Viudez-Canobas.[13]

On October 10, 2011, Panganiban also filed a Complaint[14] for *Perjury and Unjust Vexation* against Villapando docketed as NPS-No. XV-05-INV-11-C-00601. The complaint was assigned to ACP Benjamin S. Vermug, Jr.[15]

The common allegation in the complaints of Maximo and Panganiban was that Villapando committed perjury when the latter alleged in the complaint he filed against them that they were officers and directors of ASB at the time the Deed of Sale was executed between ASB and Enhanced Electronics on February 28, 1997. They claimed that they were not even employees of ASB in 1997 as they were both minors at that time.

After the filing of the Counter-Affidavit,[16]Reply-Affidavit,[17] and Rejoinder-Affidavit,[18] ACP Canobas issued a Resolution[19] (*Canobas Resolution*) on August 3, 2011 finding probable cause against Villapando for the crime of perjury but dismissed the complaints for unjust vexation and incriminating innocent person. The Resolution was approved[20] by Senior Assistant City Prosecutor (*SACP*) Christopher Garvida.

Accordingly, on August 15, 2011, an Information[21] dated July 26, 2011 for Perjury was filed against Villapando before

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[13] *Rollo* (G.R. No. 214925), p. 12.

[14] *Rollo* (G.R. No. 214965), pp. 135-144.

[15] *Rollo* (G.R. No. 214925), p. 12.

[16] *Rollo* (G.R. No. 214965), pp. 145-153.

[17] *Id.* at 168-175.

[18] *Id.* at 176-182.

[19] *Id*. at 225-230; *rollo* (G.R. No. 214925), pp. 63-69.

[20] "For The City Prosecutor"

[21] *Rollo* (G.R No. 214965), pp. 231-232; *rollo* (G.R. No. 214925), pp. 70-71.

Branch 67 of the METC, Makati City. The Information was signed by ACP Canobas and sworn to before ACP Benjamin S. Vermug, Jr.

Meanwhile, on August 31, 2011,Villapando filed a Motion for Partial Reconsideration[22]of the Canobas Resolution before the OCP-Makati alleging that the Information was filed without the prior written authority of the City Prosecutor. He also stated that violations of Sections 17, 20 and 25 are committed not at the time of the execution of the contract to sell but after the execution of the contract, and that there is no allegation in his complaint-affidavit that Maximo was part of the "scheme in the execution of the contract to sell."

Pending resolution of the aforesaid motion for partial reconsideration, a warrant of arrest against Villapando was issued by the METC.[23] On October 14, 2011, Villapando filed a Motion to Quash Information[24]alleging that the person who filed the Information had no authority to do so. He asserted that the Information, as well as the Resolution finding probable cause against him, did not bear the approval of the City Prosecutor of Makati, Feliciano Aspi, which is contrary to Section 4 of Rule 112 of the Rules of Court.

On October 20, 2011, Villapando filed a Supplemental Motion to Quash Information[25] on the ground that the facts charged do not constitute an offense. According to Villapando, violations of Sections 17, 20 and 25 of P.D. No. 957 are continuing crimes, hence, the allegations in the Information do not constitute an offense and a quashal of the same is warranted.

After the filing of the Consolidated Opposition[26] by Maximo and Panganiban, as well as the Reply[27] thereto filed by

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[22] *Rollo* (G.R. No. 214965), pp. 412-422.

[23] *Rollo* (G.R. No. 214925), pp. 239-248.

[24] *Rollo* (G.R. No. 214965), pp. 234-248.

[25] *Rollo* (G.R. No. 214925), p. 14.

[26] *Rollo* (G.R. No. 214965), pp. 273-280.

[27] *Id.* at 281-288.

Villapando, the METC denied the Motion to Quash in an Order[28] dated November 11, 2011. The METC ruled that the presumption of regularity in the performance of official functions should be appreciated in favor of the public prosecutors. It found that the certification by ACP Canobas in the Information stating that the filing of the Information was with the prior authority of the City Prosecutor constitutes substantial compliance with the rules. As to the allegation that the facts charged do not constitute an offense, the METC held that the elements of the crime of perjury were sufficiently alleged in the Information. The *decretal* portion of the METC Decision states:

> WHEREFORE, considering that this case can still be heard and threshed out in a full blown trial, the Court DENIES the Motion to Quash the Information dated October 14, 2011 and its Supplements (to Motion to Quash Information) dated October 19, 2011.
>
> SO ORDERED.[29]

Villapando moved for reconsideration[30]of the Order of the METC dated November 11, 2011. Maximo and Panganiban opposed[31] the motion and Villapando replied[32] thereto. Also, a supplement[33] to the motion was filed on June 14, 2012.

Meanwhile, after an exchange of pleadings – counter-affidavit,[34] reply-affidavit,[35] and rejoinder-affidavit,[36] ACP Vermug, Jr. issued a Resolution[37](*Vermug Resolution*) in NPS-

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[28] *Rollo* (G.R. No. 214925), pp. 72-73.

[29] *Id.* at 73.

[30] *Rollo* (G.R. No. 214965), pp. 291-298.

[31] *Id.* at 299-303.

[32] *Id.* at 305-312.

[33] *Id.* at 320-323.

[34] *Id.* at 184-191.

[35] *Id.* at 207-213.

[36] *Id.* at 214-220.

[37] *Rollo* (G.R. No. 214925), pp. 78-80; *id.* at 317-319.

No. XV-05-INV-11-C-00601 on January 13, 2012 finding probable cause against Villapando for the crime of perjury but dismissed the complaint for unjust vexation. The Resolution was approved[38] by Senior Assistant City Prosecutor (*SACP*) Christopher Garvida who recommended for the filing of an Amended Information before the METC to include Panganiban as one of the complainants.

Thus, on January 19, 2012, the prosecution filed a Motion to Amend the Information and to Admit Attached Information[39] to include Panganiban as one of the complainants in the case.

At this point, for a clear reading of the subsequent procedural incidents, We separately state the proceedings before the Department of Justice (*DOJ*) from the proceedings before the courts.

Proceedings before the DOJ:

As earlier stated, the Canobas Resolution pertains to the complaint for perjury filed by Maximo against Villapando which gave rise to the filing of the Information before the MeTC, but a motion to partially reconsider the said resolution was filed by Villapando.

On the other hand, the Vermug Resolution pertains to the complaint for perjury filed by Panganiban against Villapando which gave rise to the filing of an Amended Information. On February 13, 2012, Villapando filed a Motion for Partial Reconsideration[40] of the Vermug Resolution before the OCP-Makati.

On February, 21, 2012, the OCP-Makati issued an Order[41] denying Villapando's Motion for Partial Reconsideration of

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[38] "For The City Prosecutor"

[39] *Rollo* (G.R. No. 214965), pp. 313-314; *rollo* (G.R. No. 214925), pp. 74-77.

[40] *Rollo,* G.R. No. 214965, pp. 423-440.

[41] *Rollo* (G.R. No. 214925), pp. 81-82; *id*. at 436-434.

the Canobas Resolution. The Order stated that there was prior written authority for the City Prosecutor in filing the Information by virtue of Office Order No. 32 dated July 29, 2011. The finding of probable cause was also affirmed. The Order was approved by City Prosecutor Feliciano Aspi.

Likewise, on March 20, 2012, the OCP-Makati issued an Order[42] denying Villapando's Motion for Partial Reconsideration[43] of the Vermug Resolution. The said Order merely reiterated the ruling in the Order dated February 21, 2012 denying the Motion for Partial Reconsideration of the Canobas Resolution. The said Order was also approved by City Prosecutor Feliciano Aspi.

Aggrieved, Villapando filed separate petitions for review of the Canobas Resolution and the Vermug Resolution dated March 31, 2012[44]and May 7, 2012,[45] respectively, before the DOJ. He stated in the petitions the same allegations in his motions for partial reconsideration. In addition, he contended that there was even no proof that Maximo and Panganiban were still minors at the time of the execution of the contract to sell because they did not submit any birth certificate.

On November 28, 2013, a Resolution[46] was issued by Prosecutor General Claro A. Arellano denying the petitions for review filed by Villapando for failure to append to the petitions proof that a motion to suspend proceedings has been filed in court. The copies of the resolution and the complaint affidavit were likewise declared not verified.

Proceedings before the courts:

As previously mentioned, Villapando moved to reconsider the denial of his motion to quash the Information before the

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[42] *Id*. at 102-103; *id*. at 439-440.

[43] *Rollo* (G.R. No. 214965) at 620.

[44] *Rollo* (G.R. No. 214925), pp. 83-101; *id*. at 366-385.

[45] *Id*. at 106-131; *id*. at 386-410.

[46] *Rollo,* G.R. No. 214965, pp. 558-559.

METC. In an Order[47] dated February 11, 2013, the METC denied Villapando's motion for reconsideration thereby affirming the validity of the information, and at the same time, granted the prosecution's Motion to Amend the Information.

The Amended Information[48] was signed by ACP Evangeline P. Viudez-Canobas and sworn to before ACP Benjamin S. Vermug, Jr.

On April 25, 2013, Villapando elevated the case to the RTC of Makati City via a Petition for *Certiorari* and Prohibition (with Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction)[49] assailing the Orders of the METC dated November 11, 2011 and February 11, 2013. A Comment[50] thereto was filed by Maximo and Panganiban, and a Reply to Comment[51] was filed by Villapando.

Subsequently, on May 30, 2013, the RTC issued a Decision, the dispositive portion of which states, thus:

> WHEREFORE, the petition is DENIED. The assailed 11 November 2011 order of respondent Judge in Crim. Case No. 36741 which denied petitioner's Motion to Quash the Information with supplement and the order dated February 11, 2013 which denied petitioner's Motion for Reconsideration and granted the Public Prosecutor's motion to amend Information and admit attached amended Information are AFFIRMED.
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> SO ORDERED.[52]

The RTC ratiocinated that from the denial of the motion to quash, Villapando should have gone to trial without prejudice to reiterating his special defenses invoked in his motion. In the

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[47] *Id.* at 3234-325; *Rollo,* G.R. No. 214925, pp. 104-105.

[48] *Rollo,* G.R. No. 214925, pp. 76-77;

[49] *Rollo* (G.R. No. 214965), pp. 326-350.

[50] *Id.* at 351-364.

[51] *Id.* at 441-442.

[52] *Rollo* (G.R. No. 214925), p. 141.

event that an adverse decision is rendered, an appeal therefrom should be the next legal step. Nonetheless, it found that the presumption of regularity exists in the filing of the information on the basis of the certification of ACP Canobas and ACP Vermug, Jr., coupled with the approval of the resolution by Garvida, stating that the filing of the Information was with the prior authority of the City Prosecutor. The RTC posited that the presumption has not been disputed by the City Prosecutor.

Undaunted, a Petition for *Certiorari* and Prohibition[53] dated July 31, 2013 was filed by Villapando before the CA. He raised before the CA the same issues: a) that the Information was filed without the prior written authority of the City Prosecutor; b) that the facts charged do not constitute an offense. A comment[54] on the petition was filed by Maximo and Panganiban and a Reply[55] thereto was filed by Villapando.

Before the CA, the parties filed their respective Formal Offer of Exhibits dated January 10, 2014 and January 14, 2014[56] for Villapando and Maximo and Panganiban, respectively.[57] The parties also filed their respective memoranda.[58]

On June 13, 2014, the CA rendered a Decision reversing the RTC Decision. The *fallo* of the CA Decision states:

> WHEREFORE, the petition is hereby **GRANTED**. The Decision of the Regional Trial Court of Makati City, Branch 150, in Special Civil Action No. 13-473 is hereby **REVERSED AND SET ASIDE.** Criminal Case No. 367041 pending in Branch 67, Metropolitan Trial Court, Makati City is hereby **DISMISSED WITHOUT PREJUDICE** to the filing of new Information by an authorized officer.
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> **SO ORDERED**.[59]

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[53] *Id.* at 142-168; *Rollo,* G.R. No. 214965, pp. 457-485.

[54] *Rollo,* G.R. No. 214965, pp. 486-504.

[55] *Id.* at 505-510.

[56] *Id*. at 511-518.

[57] *Id*. at 520-524.

[58] *Id*. at 525-536 (Villapando) and at 537-557 (Maximo and Panganiban).

[59] *Rollo* (G.R. No. 214925), pp. 56-57.

Despite the dismissal of the case for perjury filed against him, and considering that the dismissal was without prejudice to the filing of a new information against him, Villapando moved for a partial reconsideration[60] of the CA Decision. Villapando argued that the CA did not resolve the second issue he brought before it, that is, that the facts charged do not constitute an offense. A Comment[61] to the motion was filed by Maximo and Panganiban. Villapando replied[62] to the comment.

On the other hand, Maximo and Panganiban, as the private complainants in the aforesaid case for perjury, filed against Villapando also moved for reconsideration[63] on the dismissal of the case by the CA. An Opposition[64] thereto was filed by Villapando.

On October 16, 2014, the motions for reconsideration filed by both parties were denied by the CA.

Subsequently, Maximo and Panganiban filed a petition for review on *certiorari*[65] before this Court docketed as G.R. No. 214925. Villapando followed suit and its petition[66] was docketed as G.R. No. 214965.

A Motion to Consolidate[67] the two cases was filed by Villapando on April 29, 2015. In this Court's Resolution[68] dated July 13, 2015, We ordered the consolidation considering that the two cases "have common facts and are rooted in the same issues."

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[60] *Rollo,* G.R. No. 214965, pp. 560-568.

[61] *Id.* at 569-576.

[62] *Id.* at 577-584.

[63] *Id.* at 585-599.

[64] *Id.* at 600-604.

[65] *Rollo,* G.R. No. 214925, pp.11-35.

[66] *Rollo,* G.R. No. 214965, pp. 8-27.

[67] *Rollo,* G.R. No. 214925, pp. 200-201.

[68] *Rollo,* G.R. No. 214965, pp. 676-A and 676-B; *id.* at 230-A to 23-C.

G.R. No. 214925

We first resolve the petition filed by Maximo and Panganiban which is anchored on the following assigned errors:

First Reason

THE COURT OF APPEALS COMMITTED ERROR WHEN IT TOOK COGNIZANCE OF RESPONDENT'S PETITION FOR CERTIORARI FILED UNDER RULE 65 BECAUSE –

a. IT IS A WRONG REMEDY;

b. THE RESPONDENT'S FAILURE TO IMPLEAD THE PEOPLE OF THE PHILIPPINES, BEING AN INDISPENSABLE PARTY, WARRANTED THE DISMISSAL OF THE PETITION:

c. THE PETITION WAS ACCOMPANIED BY A FALSE VERIFICATION.

Second Reason

THE COURT OF APPEALS ERRED WHEN IT HELD THAT THE RESPONDENT'S PETITION FOR CERTIORARI FILED BEFORE THE REGIONAL TRIAL COURT WAS PROPERLY FILED;

Third Reason

THE COURT OF APPEALS ERRED WHEN IT HELD THAT THE RESPONDENT DID NOT COMMIT FORUM SHOPPING DESPITE HIS FILING OF A PETITION FOR REVIEW BEFORE THE SECRETARY OF JUSTICE INVOLVING THE SAME PARTIES, FACTS, ISSUES AND RELIEFS; and

Fourth Reason

THE COURT OF APPEALS ERRED WHEN IT HELD THAT THE TWO INFORMATIONS WERE NOT PROPERLY FILED DESPITE THE FACT THAT THEIR FILING AS WELL AS THE RESOLUTIONS RECOMMENDING THEIR FILING WERE MADE WITH PRIOR AUTHORITY OF THE CITY PROSECUTOR AND AFFIRMED BY THE CITY PROSECUTOR WHEN HE SUBSEQUENTLY DENIED THE RESPONDENT'S MOTIONS FOR PARTIAL RECONSIDERATION ON THE ASSAILED RESOLUTIONS.[69]

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[69] *Rollo* (G.R. No. 214925), pp. 17-18.

Maximo and Panganiban asserted in their petition that the denial of a petition for *certiorari* is a final order, such that, the remedy of the aggrieved party on a final order is to appeal the same. Even assuming that *certiorari* is available, the petition with the CA should have not been allowed for failure to file the requisite motion for reconsideration with the RTC prior to the filing of the petition. They also argued that since an action must be brought against indispensable parties, the instant petition should be dismissed for failure to implead the People in the petition before the RTC and the CA.

Maximo and Panganiban further averred that Villapando committed forum shopping because the issues raised before the CA were the same issues brought before the DOJ on a petition for review. They also pointed out that the petition filed with the CA was prepared only on July 31, 2013, but the verification was executed on June 20, 2013, or forty-one (41) days prior to the preparation of the petition.

Maximo and Panaganiban also contended that the Information bears the *certification* that the filing of the same has the prior authority or approval of the City Prosecutor. The non-presentation of DOJ Office Order No. 32 which was the basis of the authority in filing the Information is immaterial on the ground that public officers enjoy the presumption of regularity in the performance of their functions. They also pointed out that the issuance of the Order of the City Prosecutor himself denying Villapando's Partial Motion for Reconsideration, in effect, affirmed the validity of the Information filed.[70]

In the Comment[71] to the Petition filed by Villapando, he countered that under the circumstances of the case, appeal is not the plain, speedy and adequate remedy in the ordinary cause of law, hence, *certiorari* may validly lie. He explained that this case stemmed from a complaint that he filed with the OCP Makati City against Maximo and Panganiban as directors of ASB for violations of Sections 17, 20 and 25 of P.D. No. 957.

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[70] *Id.* at 31-32.

[71] *Id.* at 213-230.

He believed that the instant complaint was merely filed in retaliation to his earlier complaint.

Villapando declared that the petition was properly verified. He stated that during the Oral Argument before the CA on January 7, 2014, he narrated that his counsel explained to him the contents of the draft of the petition, and the original of the verification page was earlier sent to him for his perusal and signature. After reading the draft, he immediately signed the final form/original of the verification because he had then a scheduled trip abroad. He also emphasized that the People was represented by the Makati City Prosecution Office before the RTC and by the Office of the Solicitor General (*OSG*) before the CA, and were duly furnished with copies of all the pleadings.

In the Reply[72] of Maximo and Panganiban, they insisted that for failure to implead the People in the petition with the CA, the CA did not acquire jurisdiction over the parties.

In the petition filed by Maximo and Villapando, the core issue for this Court's resolution relates to the validity of the Amended Information at bar.

Section 4, Rule 112 of the 2000 Revised Rules on Criminal Procedure states that the filing of a complaint or information requires a prior written authority or approval of the named officers therein before a complaint or information may be filed before the courts, *viz.*:

> Section 4. *Resolution of investigating prosecutor and its review.* – If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

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[72] *Id.* at 257-267.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the *Sandiganbayan* in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or **information may be filed** or dismissed by an investigating prosecutor **without the prior written authority or approval of the** provincial or **city prosecutor** or chief state prosecutor or the Ombudsman or his deputy.

x x x x x x x x x[73]

Thus, as a general rule, complaints or informations filed before the courts without the prior written authority or approval of the foregoing authorized officers render the same defective and, therefore, subject to quashal pursuant to Section 3 (d), Rule 117 of the same Rules, to wit:

Section 3. *Grounds*. The accused may move to quash the complaint or information on any of the following grounds:

(a) That the facts charged do not constitute an offense;
(b) That the court trying the case has no jurisdiction over the offense charged;
(c) That the court trying the case has no jurisdiction over the person of the accused;
(d) That the officer who filed the information had no authority to do so;
(e) That it does not conform substantially to the prescribed form;
(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
(g) That the criminal action or liability has been extinguished;
(h) That it contains averments which, if true, would constitute a legal excuse or justification; and
(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.[74]

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[73] Emphasis and underscoring ours.

[74] Emphasis and underscoring ours.

In the case at bar, Villapando is charged in the Amended Information which reads:

AMENDED INFORMATION

The undersigned Prosecutor accuses FRANCISCO Z. VILLAPANDO of the crime of perjury under THE REVISED PENAL CODE Art. 183, committed as follows:

> On or about the 23rd of November 2010, in the city of Makati, the Philippines, accused, did then and there willfully, unlawfully, feloniously and falsely subscribe and swear to a complaint-affidavit docketed as NPS No. XV-05-INV-10K-03327 before Assistant City Prosecutor Andres N. Marcos of the Office of the City Prosecutor at Makati, a duly appointed, qualified, and acting as such, and in which complaint, said accused subscribed and swore to, among other things, facts known to him to be untrue, that is: complainants John Labsky P. Maximo and Robert M. Panganiban were one of the officers of ASB Realty Corporation and/or St. Francis Square Realty Corporation conspired with the other officers in the commission of the crime of violation of P.D 957 for entering into the contract to sell with Enhanced Electronics & Communication Services, Inc. involving the condominium unit and failure to register the sale and to complete the project and to deliver the title over the unit, when in truth and in fact as the said accused very well knew at the time he swore to and signed the said complaint that said statement appearing therein were false and untrue because at the time when the contract to sell was made between the parties, complainants were not even an employee/officers of the ASB Realty Corporation and was still under age, and the above false statements were made in order to impute complainants to a crime they did not commit, to their damage and prejudice.
>
> CONTRARY TO LAW.
>
> (*signed*)
> **BENJAMIN S. VERMUG, JR.**
> Assistant City Prosecutor

I HEREBY CERTIFY that I have conducted a preliminary investigation in this case in accordance with law; that I have, or as shown by the record, an authorized officer has personally examined

complainant and witnesses, that on the basis of sworn statements and other evidence submitted before me there is reasonable ground to believe that the crime has been committed and that accused is probably guilty thereof, that accused was informed of the complaint and of the evidence submitted against him and was given the opportunity to submit controverting evidence. I further certify that the filing of this Information is with the prior authority or approval of the City Prosecutor.

(*signed*)
BENJAMIN S. VERMUG, JR.
Assistant City Prosecutor

SUBSCRIBED AND SWORN to before me this 26th day of July 2011 in the City of Makati.

(*signed*)
EVANGELINE P. VIUDEZ-CANOBAS
Assistant City Prosecutor

Maximo and Panganiban argued in their petition that the CA erred in holding that the Information did not comply with the rule requiring prior written authority or approval of the City or Provincial Prosecutor. They pointed out that the Information bears the *certification* that the filing of the same had the prior authority or approval of the City Prosecutor who is the officer authorized to file information in court. According to them, there is a presumption that prior written authority or approval of the City Prosecutor was obtained in the filing of the Information, such that, the non-presentation of Office Order No. 32, which was the alleged basis of the authority in filing the Information, is immaterial.

In the cases of *People v. Garfin,*[75] *Turingan v. Garfin*,[76] and *Tolentino v. Paqueo,*[77] this Court had already rejected similarly-

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[75] 470 Phil. 211 (2004).

[76] 549 Phil. 903 (2007).

[77] 551 Phil. 355 (2007).

worded certifications uniformly holding that, despite such certifications, the Informations were defective as it was shown that the officers filing the same in court either lacked the authority to do so or failed to show that they obtained prior written authority from any of those authorized officers enumerated in Section 4, Rule 112 of the 2000 Revised Rules of Criminal Procedure.[78]

Therefore, there must be a demonstration that prior written delegation or authority was given by the city prosecutor to the assistant city prosecutor to approve the filing of the information. We have recognized this valid delegation of authority in the case of *Quisay v. People,*[79] *viz.*:

> In the case at bar, the CA affirmed the denial of petitioner's motion to quash on the grounds that: (a) the City Prosecutor of Makati may delegate its authority to approve the filing of the *Pabatid Sakdal* pursuant to Section 9 of RA 10071, as well as OCP-Makati Office Order No. 32; and (b) the *Pabatid Sakdal* contained a Certification stating that its filing before the RTC was with the prior written authority or approval from the City Prosecutor.
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> The CA correctly held that based on the wordings of Section 9 of RA 10071, which gave the City Prosecutor the power to "[investigate and/or ***cause to be investigated*** all charges of crimes, misdemeanors and violations of penal laws and ordinances within their respective jurisdictions, ***and have the necessary information or complaint prepared or made and filed*** against the persons accused," he may indeed delegate his power to his subordinates as he may deem necessary in the interest of the prosecution service. The CA also correctly stressed that it is under the auspice of this provision that the City Prosecutor of Makati issued OCP-Makati Office Order No. 32, which gave division chiefs or review prosecutors "authority to approve or act on any resolution, order, issuance, other action, and any information recommended by any prosecutor for approval," without necessarily diminishing the City Prosecutor's authority to act directly in appropriate cases. By virtue of the foregoing issuances, the City Prosecutor validly designated SACP Hirang, Deputy City Prosecutor Emmanuel D.

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[78] *Quisay v. People,* G.R. No. 216920, January 13, 2016, 781 SCRA 98, 107-108.

[79] *Supra.*

Medina, and Senior Assistant City Prosecutor William Celestino T. Uy as review prosecutors for the OCP-Makati.

In this light, the *Pasiya* or Resolution finding probable cause to indict petitioner of the crime charged, was validly made as it bore the approval of one of the designated review prosecutors for OCP-Makati, SACP Hirang, as evidenced by his signature therein.

In the case at bar, if indeed there was no proof of valid delegation of authority as found by the CA, We are constrained not to accord the presumption of regularity in the performance of official functions in the filing of the Amended Information. The CA ruling states:

x x x We scoured the records of the case and We did not find a copy of the purported Office Order No, 32 allegedly authorizing the Assistant City Prosecutor to sign in behalf of the city prosecutor. While We, too, are not oblivious of the enormous responsibility and the heavy volume of work by our prosecutors, We believe that such reality does not excuse them to comply with the mandatory requirement stated in our rules of procedure. Moreover, the said Office Order No. 32 is not a matter of judicial notice, hence, a copy of the same must be presented in order for the court to have knowledge of the contents of which. In the absence thereof, We find that there was no valid delegation of the authority by the City Prosecutor to its Assistant Prosecutor.[80]

x x x x x x x x x

Applying the foregoing lessons from our jurisprudence, We certainly cannot equate the approval of the Assistant City Prosecutor to that of his superior. Clearly, we see nothing in the record which demonstrates the prior written delegation or authority given by the city prosecutor to the assistant city prosecutor to approve the filing of the information.

For the lack of such prior written authority, the inescapable result is that the court did not acquire jurisdiction over the case because there is a defect in the Information. It is for the same reason that there is no point in compelling petitioner to undergo trial under a

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[80] *Rollo* (G.R. No. 214925), pp. 52-53. (Underscoring ours)

defective information that could never be the basis of a valid conviction.[81]

Furthermore, We find untenable the argument of Maximo and Panganiban that the issuance of the Order dated February 21, 2012, bearing the signature of the City Prosecutor, denying Villapando's Partial Motion for Reconsideration, in effect, affirmed the validity of the Information filed.[82]

The case of *People v. Garfin,*[83] firmly instructs that the filing of an Information by an officer without the requisite authority to file the same constitutes a jurisdictional infirmity which cannot be cured by silence, waiver, acquiescence, or even by express consent. In the said case, We lift the ruling in *Villa v. Ibañez, et al.:*[84]

> x x x Now, the objection to the respondent's actuations goes to the very foundation of the jurisdiction. It is avalid information signed by a competent officer which, among other requisites, confers jurisdiction on the court over the person of the accused and the subject matter of the accusation. In consonance with this view, an infirmity in the information cannot be cured by silence, acquiescence, or even by express consent.[85]

An Information, when required by law to be filed by a public prosecuting officer, cannot be filed by another. The court does not acquire jurisdiction over the case because there is a defect in the Information.[86] There is no point in proceeding under a defective Information that could never be the basis of a valid conviction.[87]

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[81] *Id.* 55-56. (Underscoring ours)

[82] *Rollo* (G.R. No. 214925), pp. 31-32.

[83] *Supra* note 75, at 230.

[84] 88 Phil. 402 (1951).

[85] *Villa v. Ibañez, supra* at 405. (Underscoring ours)

[86] *Miaque v. Patag,* 597 Phil. 389, 395 (2003).

[87] *Dela Chica v. Sandiganbayan*, 462 Phil. 712, 723 (2003).

As to the issue raised by Maximo and Panganiban which relates to the propriety of the chosen legal remedies availed of by Villapando in the lower courts to question the denial of his motion to quash, We find the same untenable.

In the usual course of procedure, a denial of a motion to quash filed by the accused results in the continuation of the trial and the determination of the guilt or innocence of the accused. If a judgment of conviction is rendered and the lower courts' decision of conviction is appealed, the accused can then raise the denial of his motion to quash not only as an error committed by the trial court but as an added ground to overturn the latter's ruling.[88]

In this case, Villapando did not proceed to trial but opted to immediately question the denial of his motion to quash *via* a special civil action for *certiorari* under Rule 65 of the Rules of Court.

It is also settled that a special civil action for *certiorari* and prohibition is not the proper remedy to assail the denial of a motion to quash an information. The established rule is that when such an adverse interlocutory order is rendered, the remedy is not to resort forthwith to *certiorari* or prohibition, but to continue with the case in due course and, when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law.[89]

As a rule, the denial of a motion to quash is an interlocutory order and is not appealable; an appeal from an interlocutory order is not allowed under Section 1(c), Rule 41 of the Rules of Court.[90] Neither can it be a proper subject of a petition for

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[88] *Galzote v. Briones,* G.R. No. 673 Phil. 165, 172 (2011).

[89] *Zamoranos v. People, et al.,* 665 Phil. 447, 460 (2011).

[90] Section 1. *Subject of appeal*. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable. No appeal may be taken from:

certiorari which can be used only in the absence of an appeal or any other adequate, plain and speedy remedy. The plain and speedy remedy upon denial of an interlocutory order is to proceed to trial as discussed above.[91]

Thus, a direct resort to a special civil action for *certiorari* is an exception rather than the general rule, and is a recourse that must be firmly grounded on compelling reasons.[92]

However, on a number of occasions, We have recognized that in certain situations, *certiorari* is considered an appropriate remedy to assail an interlocutory order, specifically the denial of a motion to quash. We have recognized the propriety of the following exceptions: (a) when the court issued the order without or in excess of jurisdiction or with grave abuse of discretion; (b) when the interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief; (c) in the interest of a more enlightened and substantial justice; (d) to promote public welfare and public policy; and (e) when the cases have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof.[93]

In grave abuse of discretion cases, *certiorari* is appropriate if the petitioner can establish that the lower court issued the judgment or order without or in excess of jurisdiction or with grave abuse of discretion, and the remedy of appeal would not afford adequate and expeditious relief. The petitioner carries the burden of showing that the attendant facts and circumstances fall within any of the cited instances.[94]

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(c) An interlocutory order;

x x x x x x x x x

[91] *Galzote v. Briones, supra* note 88.

[92] *Id.*

[93] *Zamoranos v. People, et al., supra* note 89, at 461.

[94] *Galzote v. Briones, supra* note 88, at 173.

In the case at bar, We find that there was a compelling reason to justify a resort to a petition for *certiorari* against the Order of the METC. Villapando was able to show that the factual circumstances of his case fall under any of the above exceptional circumstances. The METC committed grave abuse of discretion in denying the motion to quash filed by Villapando. We adopt the ruling of the CA on this matter:

> In this petition, petitioner insists that the RTC committed grave abuse of discretion in dismissing his Petition for Certiorari despite the lack of authority to file the information from the City Prosecutor, on the basis of the principle of "presumption of regularity." Verily, the issue raised in this Petition goes into the very authority of the court over the case. This is because a finding of the lack of authority for the assistant prosecutor in approving the probable cause resolution necessarily invalidates the information, and thereby ousts the court of jurisdiction to try and decide the case.[95] As will be discussed later, petitioner was able to establish the merit of his contention.
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> Likewise, We cannot ignore the fact, as admitted by the private respondents, that this case stemmed from a complaint filed by Petitioner with the Makati City Prosecution Office against private respondents, as directors of ASB for violations of Secs. 17, 20 and 25 of PD No. 957 or the Subdivision and Condominium Buyer's Protective Decree. Petitioner since the inception of this case, has been insistent that the criminal complaints filed by private respondents were merely filed in retaliation of his earlier complaint.
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> Thus, to deny petitioner the relief of a writ of certiorari and force him to go to trial would be self-defeating. To require Petitioner to go to the prescribed route of undergoing trial and filing an appeal thereafter, will undoubtly expose him to the injuries which he seeks to promptly avoid by filing the instant Petition.[96]

As correctly held by the CA, the METC committed an error of jurisdiction, not simply an error of judgment, in denying Villapando's motion to quash the Information as will be shown in the succeeding discussion.

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[95] *Romualdez v. Sandiganbayan,* 434 Phil. 670 (2002).

[96] *Rollo* (G.R. No. 214925), pp. 47-48.

Moreover, We recognize that the petition for *certiorari* filed by Villapando before the RTC was an original action whose resulting decision is a final order that completely disposed of the petition. Section 2, Rule 41 of the Rules of Court,[97] states that cases decided by the RTC in the exercise of its original jurisdiction must be appealed to the CA. Nonetheless, We have allowed exceptions for good cause that could warrant the relaxation of the rule as in this case.[98] As discussed above, the RTC gravely abuse its discretion in dismissing the petition of Villapando thereby affirming the denial of his motion to quash before the METC. We note that Villapando's liberty was already in jeopardy with the continuation of the criminal proceedings against him such that a resort to a petition for *certiorari* is recognized.

As a rule, *certiorari* lies when: (1) a tribunal, board, or officer exercises judicial or quasi-judicial functions; (2) the tribunal, board, or officer has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[99]

The writ of *certiorari* serves to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess or lack of jurisdiction, or to relieve parties from arbitrary acts of courts which courts have no power or authority in law to perform.[100]

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[97] SEC. 2. *Modes of appeal.*

(a) *Ordinary appeal.* The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party.

[98] *Heirs of Arturo Garcia v. Municipality of Iba, Zambales,* G.R. No. 162217, July 22, 2015, 763 SCRA 349, 358.

[99] *Zamoranos v. People, supra* note 89.

[100] *Id.*

Anent the issue on forum shopping, We held in the case of *Flores v. Secretary Gonzales, et al.*[101] that there is no forum shopping when a petition is filed with the CA while another petition is pending with the DOJ Secretary, thus:

> We wish to point out that, notwithstanding the pendency of the Information before the MTCC, especially considering the reversal by the Secretary of Justice of his May 31, 2006 Resolution, a petition for *certiorari* under Rule 65 of the Rules of Court, anchored on the alleged grave abuse of discretion amounting to excess or lack of jurisdiction on the part of Secretary of Justice, was an available remedy to Flores as an aggrieved party.
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> In the petition for *certiorari*, the Court of Appeals is not being asked to cause the dismissal of the case in the trial court, but only to resolve the issue of whether the Secretary of Justice acted with grave abuse of discretion in either affirming or reversing the finding of probable cause against the accused. But still the rule stands the decision whether to dismiss the case or not rests on the sound discretion of the trial court where the Information was filed. As jurisdiction was already acquired by the MTCC, this jurisdiction is not lost despite a resolution by the Secretary of Justice to withdraw the information or to dismiss the case, notwithstanding the deferment or suspension of the arraignment of the accused and further proceedings, and not even if the Secretary of Justice is affirmed by the higher courts.
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> Verily, it bears stressing that the trial court is not bound to adopt the resolution of the Secretary of Justice, in spite of being affirmed by the appellate courts, since it is mandated to independently evaluate or assess the merits of the case and it may either agree or disagree with the recommendation of the Secretary of Justice. Reliance on the resolution of the Secretary of Justice alone would be an abdication of the trial courts duty and jurisdiction to determine a *prima facie* case. Thus, the trial court may make an independent assessment of the merits of the case based on the affidavits and counter-affidavits, documents, or evidence appended to the Information; the records of the public prosecutor which the court may order the latter to produce before it; or any evidence already adduced before the court by the accused at the time the motion is filed by the public prosecutor. The

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[101] 640 Phil. 694 (2010).

trial court should make its assessment separately and independently of the evaluation of the prosecution or of the Secretary of Justice.[102]

The filing of an appeal with the DOJ as well as the filing of the petition with the CA would not constitute forum shopping for the reason that the finding of the DOJ would not be binding upon the courts. In other words, even if the DOJ recommends dismissal of the criminal case against petitioner, such resolution would merely be advisory, and not binding upon the courts. The DOJ ruling on the petition for review would not constitute as *res judicata* on the case at bar, neither can it conflict with resolution of the court on the propriety of dismissing the case.

Forum shopping is the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another and possibly favorable opinion in another forum other than by appeal or the special civil action of *certiorari*. There can also be forum shopping when a party institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same and related causes and/or to grant the same or substantially the same reliefs on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.[103]

Maximo and Panganiban additionally raised the issue that the People of the Philippines was not impleaded as a respondent in the case nor was the Office of the Solicitor General furnished a copy of the petition.

Section 5,[104] Rule 110 of the Rules of Criminal Procedure states that all criminal actions are prosecuted under the direction

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[102] *Flores v. Secretary Gonzales, et al., supra,* at 706-707.

[103] *Arroyo v. Department of Justice, et al.,* 695 Phil. 302, 355-356 (2012).

[104] Section 5.*Who must prosecute criminal actions.* — All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public

and control of the public prosecutor. The prosecution of offenses is thus the concern of the government prosecutors. The purpose in impleading the People of the Philippines as respondent in the RTC and in the CA is to enable the public prosecutor or Solicitor General, as the case may be, to comment on the petitions.[105] Evidently, in this case, the People was represented by the Makati City Prosecution Office before the RTC and by the Office of the Solicitor General before the CA and were duly furnished with copies of all the pleadings.

Lastly, We find in the negative the issue of whether the non-filing by Villapando of a motion for reconsideration of the RTC Decision is fatal to his petition for *certiorari*.[106] While a motion for reconsideration is a condition precedent to the filing of a petition for *certiorari,* this Court has recognized exceptions to the requirement and cannot unduly uphold technicalities at the expense of a just resolution of the case.[107]

In addition, Section 6, Rule 1 of the Rules of Court provides that rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Thus, in several cases, this Court has ruled against the dismissal of petitions or appeals based solely on technicalities. Technicalities may be set aside when the strict and rigid application of the rules will frustrate rather than promote justice.[108]

The foregoing considered, We deny the petition filed by Maximo and Panganiban on the ground that, as found by the CA, the records of the case is bereft of any showing that the

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officer charged with the enforcement of the law violated may prosecute the case. This authority cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court.

[105] *Cobarrubias v. People*, 612 Phil. 984, 990 (2009), citing the case of *Vda. De Manguerra v. Risos.*

[106] *Castro v. Guevarra,* 686 Phil. 1125, 1137 (2012).

[107] *Id.*

[108] *Cobarrubias v. People*, *supra* note 105.

City Prosecutor of Makati had authorized ACP Benjamin S. Vermug, Jr. to file the subject Amended Information. Thus, the instant defective Amended Information must be quashed. The CA did not err in finding grave abuse of discretion on the part of the RTC in affirming the denial of Villapando's motion to quash the Amended Information.

G.R. No. 214965

We now turn to the petition filed by Villapando which raised the following arguments:[109]

I. Violations of Section 17, 20 and 25 of P.D. 957 are committed not upon the execution of the Contract to Sell between the Developer and Buyer, but thereafter. They continue to be committed until full compliance of the requirements and mandate of law.

II. Violations of Sections 17, 20 and 25 of P.D. 957 are continuing offenses.

III. Violations of Section 17, 20 and 25 of P.D. 957 are continuing offenses, hence, the allegations of the Information and amended Information against petitioner do not constitute the offense charged (perjury).

IV. The CA should not have skirted but resolved the foregoing substantial legal issues.

Villapando asserted in his petition that it was necessary for the CA to have resolved the nature of the violation of Sections 17, 20 and 25 of P.D. No. 957 to determine whether he could be held liable for the crime of perjury. He stated that nothing in P.D. No. 957 would suggest that violation of its provisions is committed at the time of the execution of the contract to sell between the developer and the buyer. According to him, there can be no violation at the time of the execution of the contract because it could not yet be determined if the developer will not comply with the law. Violations occur from the time the developer fails to comply with the law, and continue

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[109] *Rollo* (G.R. No. 214965), pp. 19-22.

to be committed until the developer shall have fully complied with the law.

Villapando argued in his petition that assuming *arguendo* that Maximo and Panganiban were not employees/officers of ASB at the time of the execution of the contract to sell between ASB and Enhanced, they may still be held liable being undisputedly directors of ASB at the time the complaint was filed against them, during which, there was alleged continued non-compliance with Sections 17, 20 and 25 of P.D. No. 957. Nonetheless, Villapando insisted that he never alleged in his complaint that Maximo and Panganiban were employees/officers of ASB at the time of the execution of the contract to sell. Instead, the two became officers only in 2010 as evidenced by the Articles of Incorporation he attached to his complaint. He further argued that the said issue is not material to the charge for violation of P.D. No. 957, and thus, no crime of perjury was committed.

In the Comment[110]of Maximo and Panganiban, they argued that Villapando misconstrued the concept of continuing crimes. A continuing crime requires a series of acts which stems from a single criminal resolution. The alleged violations of Sections 17, 20 and 25 of P.D. No. 957 consist of omissions such that the non-compliance thereof cannot constitute a continuing crime. They stated that the issue as to whether the violations of Sections 17, 20 and 25 of P.D. No. 957 are continuing offenses is a matter of defense which cannot be raised in a motion to quash. They also stressed that the complaint of Villapando against the ASB had already prescribed as ruled by the DOJ in its Resolution dated December 12, 2014.[111]

In Reply[112] to the Comment of Maximo and Panganiban, Villapando insisted that violation of Sections 17, 20 and 25 of P.D. No. 957 has not yet prescribed. He learned that there was

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[110] *Id*. at 617-631.

[111] *Id*. at 625-627; see note 11.

[112] *Id*. at 679-686.

violation of Section 17 of P.D. No. 957 only when he received the certification of the Makati City Register of Deeds dated May 12, 2010 stating that the contract to sell has not been registered with its office. He also stated that the DOJ Resolution dated December 12, 2014 was brought before this Court on February 18, 2015 via a petition for *certiorari* docketed as G.R. No. 216546 entitled *Francisco Z. Villapando, Jr. v. Hon. Leila de Lima.*[113]

In the Comment[114] filed by the OSG, it contended that unless and until the City Prosecutor files a new information for Perjury against Villapando, there would be no actual case to speak of and there would be no need for the court to resolve the issue regarding the nature of the violation of the provisions of P.D. No. 957.

In the Reply[115] to the Comment of the OSG, Villapando averred that it is proper for this Court that the legal issue be resolved to avoid a circuitous and vexatious litigation.

Basically, the petition of Villapando imputes grave error on the part of the CA in not resolving the substantive issue as to whether violations of Sections 17, 20 and 25 of P.D. No. 957 are continuing offenses.

The argument need not detain Us. This Court's power of review may be awesome, but it is limited to actual cases and controversies dealing with parties having adversely legal claims, to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented.[116]

An actual case or controversy involves a conflict of legal right, an opposite legal claim susceptible of judicial resolution. It is definite and concrete, touching the legal relations of parties

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[113] *Id.* at 685, 682.

[114] *Id.* at 657-665.

[115] *Id.* at 671-674.

[116] *Lozano v. Nograles,* 607 Phil. 334, 340 (2009).

having adverse legal interest; a real and substantial controversy admitting of specific relief.[117]

We agree with the argument proffered by the OSG that unless and until the City Prosecutor files a new information for perjury against Villapando, there would be no actual case to speak of and there would be no need for the court to resolve the issue regarding the nature of the violation of the provisions of P.D. No. 957. The resolution on whether Sections 17, 20 and 25 of P.D. No. 957 are continuing offenses would necessarily pre-empt the outcome of the trial before the proper court should an information be re-filed by the City Prosecutor.

Quite notable is the statement of Villapando in his Reply that he filed a petition for *certiorari* before this Court docketed as G.R. No. 216546 questioning the ruling of the DOJ Secretary in sustaining the denial of his complaint for violations of Sections 17, 20 and 25 of P.D. No. 957. Apparently, the arguments he raised in G.R. No. 216546 as to the nature of the violations of Sections 17, 20 and 25 of P.D. No. 957 are the same arguments he is raising in the instant petition.

Based on the foregoing, We deny the petition filed by Villapando and imputes no grave error on the part of the CA in not resolving the substantive issue as to whether violations of Sections 17, 20 and 25 of P.D. No. 957 are continuing offenses. We, therefore, uphold the ruling of the CA that since the Amended Information was defective on its face for having been filed by an unauthorized person, there was no need to resolve whether Sections 17, 20 and 25 of P.D. No. 957 are continuing offenses without pre-empting the trial court should an Information be filed by the prosecution.

As a final note, We need to state that had the prosecutor and the MeTC presiding judge been aware of the pertinent provisions of the Rules of Court on the matter, the defect in the Information could have been cured before the arraignment of the accused by a simple motion of the public prosecution to amend the

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[117] *David v. Macapagal Arroyo,* 522 Phil. 705, 753 (2006).

Information; the amendment at this stage of the proceedings being a matter of right on the part of the prosecution, or for the court to direct the amendment thereof to show the signature or approval of the City Prosecutor in filing the Information. Section 4, Rule 117 of the Rules of Court mandates that if the motion to quash is based on the alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made. Had either of these two been done, this case should have not unnecessarily reached this Court.

WHEREFORE, the Decision dated June 13, 2014, and Resolution dated October 16, 2014 of the Court of Appeals in CA-G.R. CV No. 131085 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Mendoza, Leonen,* and *Martires, JJ.,* concur.

SECOND DIVISION

[G.R. No. 215595. April 26, 2017]

CAREER PHILIPPINES SHIP MANAGEMENT, INC./ VERLOU R. CARMELINO, *petitioners, vs.* **NATHANIEL M. ACUB,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT AGENCY STANDARD EMPLOYMENT CONTRACT (POEA SEC); DISABILITY COMPENSATION; IF SERIOUS DOUBT EXISTS ON THE COMPANY-DESIGNATED PHYSICIAN'S DECLARATION OF THE NATURE OF A SEAMAN'S INJURY AND ITS CORRESPONDING

IMPEDIMENT GRADE, RESORT TO PROGNOSIS OF OTHER COMPETENT MEDICAL PROFESSIONALS SHOULD BE MADE; THE SEAFARER SHOULD BE GIVEN THE OPPORTUNITY TO ASSERT HIS CLAIM AFTER PROVING THE NATURE OF HIS INJURY.— In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, this Court ruled x x x. The right of a seafarer to consult a physician of his choice can only be sensible when his findings are duly evaluated by the labor tribunals in awarding disability claims. Here, the credibility of the findings of Quiogue's private doctor was properly evaluated by the NLRC when it found that the findings of Dr. Escutin who gave Grade I disability rating was more appropriate and applicable to the injury suffered by Quiogue. With these medical findings and the fact that Quiogue failed to be re-deployed by petitioners despite the fit to work assessment, Dr. Escutin's assessment should be upheld. x x x. [T]he present case and the case cited above have similarities. In this case, the records show that despite the medication and treatment with the company-designated physician, respondent still experienced pain. Hence, respondent sought the opinion of his own physician who, after the tests and examination, declared him unfit for work as a seaman. Such opinion of respondent's physician was evaluated by the NLRC, took it into consideration and adjudged that it is more appropriate than the findings of the company-designated physician. This Court ruled that, "[i]f serious doubt exists on the company-designated physician's declaration of the nature of a seaman's injury and its corresponding impediment grade, resort to prognosis of other competent medical professionals should be made. In doing so, the seafarer should be given the opportunity to assert his claim after proving the nature of his injury."

2. ID.; ID.; ID.; ID.; CLAIM FOR TOTAL PERMANENT DISABILITY BENEFITS GUIDELINES; THE SEAFARER'S DISABILITY IS DEEMED PERMANENT AND TOTAL WHERE THE COMPANY-DESIGNATED PHYSICIAN FAILED TO GIVE HIS ASSESSMENT WITHIN THE PERIOD OF 120 DAYS, WITHOUT JUSTIFIABLE REASON. — Granting that the CA used the period of 120 days as its basis in ruling that respondent is entitled to total permanent disability benefits, it is still a fact that it was only after the lapse of more than six (6) months that the company-designated physician issued a certification declaring

respondent to be entitled to a disability rating of Grade 10. This Court in *Elburg Shipmanagement Phils., Inc., v. Quiogue, Jr.* set the following guidelines, to wit: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification. As earlier mentioned, it was only after the lapse of more than six (6) months that the company-designated physician issued a certification declaring respondent to be entitled to a disability rating of Grade 10, going beyond the period of 120 days, without justifiable reason. As such, since the company-designated physician failed to give his assessment within the period of 120 days, without justifiable reason, respondent's disability was correctly adjudged to be permanent and total.

3. ID.; ID.; ID.; ID.; ID.; RULES ON THE APPLICABILITY OF THE 120-DAY PERIOD UNDER THE LABOR CODE AND THE 240-DAY PERIOD UNDER THE IMPLEMENTING RULES AND REGULATIONS.— To have a clearer understanding of the 120-day and 240-day periods, it is apt to revisit the case of *Marlow Navigation Philippines, Inc. v. Osias* where this Court thoroughly discussed the said matter x x x. Thus, to strike a balance between the two conflicting interests of the seafarer and its employer, the rules methodically took into consideration the applicability of both the 120-day period under the Labor Code and the 240-day period under the IRR. The medical assessment of the company-designated physician is not the alpha and the omega of the seafarer's claim for permanent and total disability. To become effective, such assessment must be issued within the bounds of the authorized

120-day period or the properly extended 240-day period. Hence, as it stands, the current rule provides: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative. For as long as the 120-day period under the Labor Code and the POEA-SEC and the 240-day period under the IRR co-exist, the Court must bend over backwards to harmoniously interpret and give life to both of the stated periods. Ultimately, the intent of our labor laws and regulations is to strive for social justice over the diverging interests of the employer and the employee.

APPEARANCES OF COUNSEL

Carag Jamora Somera & Villareal Law Offices for petitioners.
Justiniano B. Panambo, Jr. for respondent.

D E C I S I O N

PERALTA, *J.*:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated November 18, 2014 of petitioners Career Philippines Ship Management, Inc. and/or Verlou R. Carmelino that seeks to reverse and set aside the Decision[1] dated June 19, 2014 of the Court of Appeals (*CA*) granting respondent Nathaniel M. Acub total permanent disability benefits.

The facts follow.

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[1] Penned by Associate Justice Ricardo R. Rosario, with the concurrence of Associate Justices Amelita G. Tolentino and Leoncia Real-Dimagiba; *rollo*, pp. 30-57.

Respondent was hired by petitioner, for and in behalf of its foreign principal, CMA Ships UK Ltd., to work as Ordinary Seaman on board the vessel CM CGM America for nine (9) months with a salary of US$430.00 a month and thus embarked on the said vessel on July 2, 2010.

On November 25, 2010, after the cargo was loaded on board the vessel at Port Rotterdam, Netherlands, respondent inspected the cargo lashings of the container. He went up to the ceiling of the containers and checked the interconnection or lashings so that the cargos will be safe. Due to rain and snow, the surface of the containers were wet and while walking on top of the containers, he slipped and fell on the deck, injuring his right knee. He was given first aid and medicine. The following day, when the vessel arrived at the Port of Hamburg, Germany, he was sent to the hospital where he was operated on and confined for one week. He was recommended for repatriation and on December 5, 2010, he arrived in the Philippines. He was referred to the Seamen's Hospital for further treatment and diagnosed to have Fractured Right Patella. The doctor recommended physical therapy treatment twice a week for 6 treatment sessions.

Respondent, from December 6, 2010 up to June 16 2011, was treated under the care of the company-based physician who assessed respondent's disability as Grade 10. However, respondent claims that despite all the procedures and treatment, he still experienced pain and discomfort; thus, he sought another treatment and opinion from an independent physician, an orthopedic surgeon who concluded that respondent is still not physically fit to undertake the normal duties of a seaman. After more than 10 months since the accident, respondent was still under treatment and medical attention of the company physician. Because of his injury, he can no longer resume his work as seaman.

Considering that respondent's employment was covered by International Transport Workers' Federation Collective Bargaining Agreement (*ITF CBA*), respondent asserts that he is entitled to disability rating of Grade 1 or an equivalent of US$125,000.00 as disability compensation due an Ordinary

Seaman. Thus, he filed his claim for total and permanent disability benefits against petitioners with the Labor Arbiter.

The Labor Arbiter[2] rendered a Decision ordering petitioners, jointly and severally, to pay respondent the peso equivalent of US$10,075.00 pursuant to the Schedule of Disability Allowances under Section 32 of the Philippine Overseas Employment Agency Standard Employment Contract (*POEA SEC*) and based on the rate of exchange at the time of actual payment plus 10% for attorney's fees. The Labor Arbiter ruled that, although the medical treatment of respondent exceeded 120 days, it does not, however, entitle him to permanent total disability benefits as the 120 days upon sign-off is a limitation on the entitlement of the sickness allowance. According to the Labor Arbiter, the POEA SEC mandates that the degree of disability determined by the company-based physician should prevail over that issued by the personal doctor chosen by respondent. Thus, petitioners appealed the case to the National Labor Relations Commission (*NLRC*).

The NLRC reversed the Decision of the Labor Arbiter on the ground that the company doctor's certification cannot be considered as a final assessment of respondent's disability grade because he was still undergoing treatment and therapy; thus, the latter can already be considered as totally and permanently disabled and entitled to a total and permanent total disability of US$125,000.00 pursuant to the POEA SEC and ITF CBA. According to the NLRC, the disability of respondent shall be for more than a year because if the implant will be removed after a year, it only follows that respondent will be operated again to remove the said implant and it would take maybe a month for the wound to heal; hence, he is entitled to Grade 1 disability benefits. It, likewise, ordered the payment of 10% attorney's fees and the amount of ₱100,000.00 for moral and exemplary damages.

The CA affirmed the NLRC Decision with modification that the disability compensation of US$125,000.00 is reduced to

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[2] Adela S. Damasco.

US$89,100.00 in compliance with the CBA, and the award of moral and exemplary damages is disallowed. Respondent is also adjudged as entitled to 10% attorney's fees based on the compensation disability of US$89,100.00. According to the CA, what determines the seafarer's entitlement to permanent disability benefits is his or her inability to work for more than 120 days. The CA also ruled that since the contract of employment is the law between the parties, respondent is, therefore, covered by the International Bargaining Forum-Associated Marine Officers and Seamen's Union of the Philippines/International Maritime Employers' Council Total Crew Cost (*IBF-AMOSUP/IMEC TCC*) Collective Bargaining Agreement wherein it granted a maximum disability benefit rating in the amount of US$89,100.00 in case a seafarer suffers from total and permanent disability. Hence, according to the CA, there was no factual and legal basis for the NLRC to grant a disability benefit rating in the amount of US$125,000.00 since what was provided for in the CBA is the amount of US$89,100.00 only. It also found the award of moral and exemplary damages by the NLRC in the amount of ₱100,000.00 improper because respondent failed to establish that petitioners were guilty of bad faith in dealing with him. Respondent was also ruled to be entitled with attorney's fees of 10% of US$89,100.00 as he was forced to litigate to seek redress. The MR was denied.

Hence, the present petition with the following grounds:

I. THE COURT OF APPEALS COMMITTED ERROR OF LAW WHEN IT RULED THAT MERE LAPSE OF 120 DAYS FROM REPATRIATION AUTOMATICALLY ENTITLES THE SEAFARER TO GRADE 1 DISABILITY COMPENSATION.

II. THE COURT OF APPEALS COMMITTED ERROR OF LAW WHEN IT UPHELD THE ASSESSMENT OF ACUB'S PHYSICIAN OF CHOICE OVER THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN WITHOUT BASIS IN LAW AND JURISPRUDENCE.

According to petitioners, the CA committed error of law when it ruled that the mere lapse of 120 days from repatriation

automatically entitles the seafarer to Grade 1 disability compensation and argue that the CA applied the 1994 and 1996 Standard Employment Contracts instead of the 2000 Standard Employment Contract, as amended, which governs the 2010 employment contract between respondent and petitioners. It is also argued that the CA committed error of law when it upheld the assessment of Acub's physician of choice over the findings of the company-designated physician without any basis in law and jurisprudence.

Respondent, in its Comment[3] dated March 23, 2015, asserts that the CA correctly ruled that petitioner failed to prove the act of tolerance and that the same court ruled the case based on facts and issues decided in the lower court.

The petition lacks merit.

The CA did not err in its ruling neither did it exercise grave abuse of discretion in deciding the case.

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,[4] this Court ruled:

> In this case, the records show that despite the medication and therapy with the company-designated physician, Quiogue still experienced recurring pains in his injured left foot. The company-designated physician, however, even with the recurring pains, declared him as fit to work. Thus, Quiogue sought the opinion of his own physician, Dr. Escutin, who after the necessary tests and examination declared him unfit for sea duty in whatever capacity as a seaman.
>
> The right of a seafarer to consult a physician of his choice can only be sensible when his findings are duly evaluated by the labor tribunals in awarding disability claims.
>
> Here, the credibility of the findings of Quiogue's private doctor was properly evaluated by the NLRC when it found that the findings of Dr. Escutin who gave Grade 1 disability rating was more appropriate and applicable to the injury suffered by Quiogue. With these medical

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[3] *Rollo*, pp. 77-100.

[4] G.R. No. 211882, July 29, 2015, 764 SCRA 431.

findings and the fact that Quiogue failed to be re-deployed by petitioners despite the fit to work assessment, Dr. Escutin's assessment should be upheld.

Even in the absence of an official finding by Dr. Escutin, Quiogue is deemed to have suffered permanent total disability pursuant to the following guidelines, thus:

> Permanent disability is inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.
>
> Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do.
>
> A total disability does not require that the employee be completely disabled, or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his or her usual work and earn from it. A total disability is considered permanent if it lasts continuously for more than 120 days.

To recapitulate/from the time Quiogue was medically repatriated on November 19, 2010, he was unable to work for more than 120 days. The company-designated physician was silent on a need to extend the period of diagnosis and treatment to 240 days. Hence, it is the 120-day period under Article 192 (c) (1) of the Labor Code that shall apply in the present case.

The fact that Quiogue was declared "fit to work" by the company-designated physician (with whom he underwent treatment and therapy from November 2010 to April 2011) on April 13, 2011 does not matter because the certification was issued beyond the authorized 120-day period. As aptly ruled by the CA, the assessment of fitness to return to work by the company-designated physician notwithstanding, his disability was considered permanent and total as the said certification was issued **after the lapse of more than 120 days from the time of his repatriation**.

Similarly, there is no merit in petitioners' argument that Quiogue's entitlement to permanent total disability benefits was merely based on his inability to return to work for 120 days. He was entitled to

permanent and total disability benefits not solely because of his incapacity to work for more than 120 days, but also because the company-designated physician belatedly gave his definite assessment on Quiogue medical condition, without any justifiable reason therefor.

Moreover, as correctly noted by Quiogue, his entitlement to permanent total disability compensation, as determined by the LA, the NLRC and the CA, was due to his inability to work/return to his seafaring occupation after 120 days until the present time. Significantly, as aptly found by the NLRC, he remained unemployed even after the time he filed the complaint to recover permanent total disability compensation. In the aforecited case of ***Carcedo****, it was stated that should the company-designated physician fail to give his proper medical assessment and the seafarer's medical condition remains unresolved,* ***the seafarer shall be deemed totally and permanently disabled***.[5]

Needless to say, the present case and the case cited above have similarities. In this case, the records show that despite the medication and treatment with the company-designated physician, respondent still experienced pain. Hence, respondent sought the opinion of his own physician who, after the tests and examination, declared him unfit for work as a seaman. Such opinion of respondent's physician was evaluated by the NLRC, took it into consideration and adjudged that it is more appropriate than the findings of the company-designated physician. This Court ruled that, "[i]f serious doubt exists on the company-designated physician's declaration of the nature of a seaman's injury and its corresponding impediment grade, resort to prognosis of other competent medical professionals should be made. In doing so, the seafarer should be given the opportunity to assert his claim after proving the nature of his injury."[6]

Petitioners also argue that the CA applied the 1994 and 1996 Standard Employment Contracts instead of the 2000 Standard

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[5] *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr., supra*, at 455-457. (Emphasis supplied).

[6] *Abante v. KJGS Fleet Management Manila, et al.,* 622 Phil. 761, 768-769 (2009).

Employment Contract, as amended, which governs the 2010 employment contract between respondent and petitioners.

Granting that the CA used the period of 120 days as its basis in ruling that respondent is entitled to total permanent disability benefits, it is still a fact that it was only after the lapse of more than six (6) months that the company-designated physician issued a certification declaring respondent to be entitled to a disability rating of Grade 10. This Court in *Elburg Shipmanagement Phils., Inc., v. Quiogue, Jr.*[7] set the following guidelines, to wit:

> 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
>
> 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
>
> 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
>
> 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

As earlier mentioned, it was only after the lapse of more than six (6) months that the company-designated physician issued a certification declaring respondent to be entitled to a disability rating of Grade 10, going beyond the period of 120 days, without justifiable reason. As such, since the company-designated physician failed to give his assessment within the period of 120 days, without justifiable reason, respondent's disability was correctly adjudged to be permanent and total.

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[7] *Supra* note 4, at 453-454.

To have a clearer understanding of the 120-day and 240-day periods, it is apt to revisit the case of *Marlow Navigation Philippines, Inc. v. Osias*[8] where this Court thoroughly discussed the said matter, thus:

> As early as 1972, the Court has defined the term permanent and total disability in the case of *Marcelino v. Seven-Up Bottling Co. of the Phil*,, in this wise: "[permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for, or accustomed to perform, or any other kind of work which a person of his mentality and attainments could do."
>
> The present controversy involves the permanent and total disability claim of a specific type of labourer — a seafarer. The substantial rise in the demand for seafarers in the international labor market led to an increase of labor standards and relations issues, including claims for permanent and total disability benefits. To elucidate on the subject, particularly on the propriety and timeliness of a seafarer's entitlement to permanent and total disability benefits, a review of the relevant laws and recent jurisprudence is in order.
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> Article 192(c) (1) of the Labor Code, which defines permanent and total disability of laborers, provides that:
>
> ART. 192. Permanent Total Disability
>
> x x x x x x x x x
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for **more than one hundred twenty days**, except as otherwise provided in the Rules; [emphasis supplied]
>
> The rule referred to is Rule X, Section 2 of the Amended Rules on Employees' Compensation, implementing Book IV of the Labor Code (IRR), which states:
>
> Sec. 2. *Period of entitlement*. (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120

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[8] G.R. No. 215471, November 23, 2015, 775 SCRA 342.

> consecutive days **except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days** from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.
>
> [Emphasis and Underscoring Supplied]

These provisions should be read in relation to the 2000 Philippine Overseas Employment Administration Standard Employment Contract (*POEA-SEC*) whose Section 20 (B) (3) states:

> Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but **in no case shall this period exceed one hundred twenty (120) days.**
>
> [Emphasis Supplied]

In *Crystal Shipping, Inc. v. Natividad*, *(Crystal Shipping)* the Court ruled that "[permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body." Thereafter, litigant-seafarers started citing *Crystal Shipping* to demand permanent and total disability benefits simply because they were incapacitated to work for more than 120 days.

The *Court in Vergara v. Hammonia Maritime Services, Inc. (Vergara)*, however, noted that the doctrine expressed in *Crystal Shipping* — that inability to perform customary work for more than 120 days constitutes permanent total disability — should not be applied in all situations. The specific context of the application should be considered in light of the application of all rulings, laws and implementing regulations. It was provided therein that:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is

> acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made <u>because the seafarer requires further medical attention</u>, then the temporary total disability period may be extended up to a maximum of 240 days**, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.
>
> [Emphasis and Underscoring Supplied]

In effect, by considering the law, the POEA-SEC, and especially the IRR, *Vergara* extended the period within which the company-designated physician could declare a seafarer's fitness or disability to 240 days. Moreover, in that case, the disability grading provided by the company-designated physician was given more weight compared to the mere incapacity of the seafarer therein for a period of more than 120 days.

The apparent conflict between the 120-day period under *Crystal Shipping* and the 240-day period under *Vergara* was observed in the case of *Kestrel Shipping Co., Inc. v. Munar (Kestrel).* In the said case, the Court recognized that *Vergara* presented a restraint against the indiscriminate reliance on *Crystal Shipping*. A seafarer's inability to work despite the lapse of 120 days would not automatically bring about a total and permanent disability, considering that the treatment of the company-designated physician may be extended up to a maximum of 240 days. In *Kestrel,* however, as the complaint was filed two years before the Court promulgated *Vergara* on October 6, 2008, then the seafarer therein was not stripped of his cause of action.

To further clarify the conflict between *Crystal Shipping* and *Vergara,* the Court in *Montierro v. Rickmers Marine Agency Phils., Inc.* stated that "[i]f the maritime compensation complaint was filed prior to October 6, 2008, the 120-day rule applies; if, on the other hand, the complaint was filed from October 6, 2008 onwards, the 240-day rule applies."

Then came *Carcedo v. Maine Marine Phils., Inc. (Carcedo).* Although the said case recognized the 240-day rule in Vergara, it was pronounced therein that "[t]he determination of the fitness of a seafarer for sea duty is the province of the company-designated

physician, **subject to the periods prescribed by law.**" Carcedo further emphasized that "[t]he company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled."

Finally, in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr., (Elburg)*, it was affirmed that the Crystal Shipping doctrine was not binding because a seafarer's disability should not be simply determined by the number of days that he could not work. Nevertheless, the pronouncement in *Carcedo* was reiterated — that the determination of the fitness of a seafarer by the company-designated physician should be subject to the periods prescribed by law. *Elburg* provided a summation of periods when the company-designated physician must assess the seafarer, to wit:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

In essence, the Court in *Elburg* no longer agreed that the 240-day period provided by *Vergara*, which was sourced from the IRR, should be an absolute rule. The company-designated physician would still be obligated to assess the seafarer within the original 120-day period from the date of medical repatriation and only with sufficient justification may the company-designated physician be allowed to

extend the period of medical treatment to 240 days. The Court reasoned that:

> Certainly, the company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR. It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance
>
> On the contrary, if we completely ignore the general 120-day period under the Labor Code and POEA-Contract and apply the exceptional 240-day period under the IRR unconditionally, then the IRR becomes absolute and it will render the law forever inoperable. Such interpretation is contrary to the tenets of statutory construction.
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> Thus, to strike a balance between the two conflicting interests of the seafarer and its employer, the rules methodically took into consideration the applicability of both the 120-day period under the Labor Code and the 240-day period under the IRR. The medical assessment of the company-designated physician is not the alpha and the omega of the seafarer's claim for permanent and total disability. To become effective, such assessment must be issued within the bounds of the authorized 120-day period or the properly extended 240-day period.

Hence, as it stands, the current rule provides: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative.

For as long as the 120-day period under the Labor Code and the POEA-SEC and the 240-day period under the IRR co-exist, the Court must bend over backwards to harmoniously interpret and give life to both of the stated periods. Ultimately, the intent of our labor laws

and regulations is to strive for social justice over the diverging interests of the employer and the employee.[9]

WHEREFORE, the petition for review on *certiorari* under Rule 45 of the Rules of Court dated November 18, 2014 of Career Philippines Ship Management, Inc./Verlou R. Carmelino is **DENIED** for lack of merit. Consequently, the Decision dated June 19, 2014 of the Court of Appeals is **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Mendoza, Leonen,* and *Martires, JJ.*, concur.

SPECIAL SECOND DIVISION

[G.R. No. 217872. April 26, 2017]

ALLIANCE FOR THE FAMILY FOUNDATION, PHILIPPINES, INC. (ALFI) and ATTY. MARIA CONCEPCION S. NOCHE, in her own behalf and as President of ALFI, JOSE S. SANDEJAS, ROSIE B. LUISTRO, ELENITA S.A. SANDEJAS, EMILY R. LAWS, EILEEN Z. ARANETA, SALVACION C. MONTEIRO, MARIETTA C. GORREZ, ROLANDO M. BAUTISTA, RUBEN T. UMALI, and MILDRED C. CASTOR, *petitioners, vs.* **HON. JANETTE L. GARIN, Secretary-Designate of the Department of Health; NICOLAS B. LUTERO III, Assistant Secretary of Health, Officer-in-Charge, Food and Drug Administration; and MARIA LOURDES C. SANTIAGO, Officer-in-Charge, Center for Drug Regulation and Research,** *respondents.*

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[9] *Marlow Navigation Philippines, Inc. v. Osias, supra*, at 352-359. (Citations omitted)

[G.R No. 221866. April 26, 2017]

MARIA CONCEPCION S. NOCHE, in her own behalf and as counsel of Petitioners, JOSE S. SANDEJAS, ROSIE B. LUISTRO, ELENITA S.A. SANDEJAS, EMILY R. LAWS, EILEEN Z. ARANETA, SALVACION C. MONTEIRO, MARIETTA C. GORREZ, ROLANDO M. BAUTISTA, RUBEN T. UMALI, and MILDRED C. CASTOR, *petitioners, vs.* **HON. JANETTE L. GARIN, Secretary-Designate of the Department of Health; NICOLAS B. LUTERO III, Assistant Secretary of Health, Officer-in-Charge, Food and Drug Administration; and MARIA LOURDES C. SANTIAGO, Officer-in-Charge, Center for Drug Regulation and Research,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE BODY; POWERS; *QUASI-LEGISLATIVE* POWER OR POWER OF SUBORDINATE LEGISLATION DISTINGUISHED FROM *QUASI-JUDICIAL* POWER.— The powers of an administrative body are classified into two fundamental powers: *quasi-legislative* and *quasi-judicial*. **Quasi-legislative power**, otherwise known as the power of subordinate legislation, has been defined as the authority delegated by the lawmaking body to the administrative body to adopt rules and regulations intended to carry out the provisions of law and implement legislative policy. "[A] legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof." The exercise by the administrative body of its quasi-legislative power through the promulgation of regulations of general application does not, as a rule, require notice and hearing. The only exception being where the Legislature itself requires it and mandates that the regulation shall be based on certain facts as determined at an appropriate investigation. **Quasi-judicial power**, on the other hand, is known as the power of the administrative agency to determine questions of fact to which the legislative policy is to apply, in accordance with the standards laid down by the law itself. As it involves

the exercise of discretion in determining the rights and liabilities of the parties, the proper exercise of quasi-judicial power requires the concurrence of two elements: *one*, jurisdiction which must be acquired by the administrative body and *two*, **the observance of the requirements of due process**, that is, the **right to notice and hearing**.

2. ID.; ID.; ID.; ID.; THE COURT HAS THE POWER TO REVIEW ALL ACTS AND DECISIONS WHERE THERE IS A COMMISSION OF GRAVE ABUSE OF DISCRETION, AND THE COURT'S POWER CANNOT BE CURTAILED BY THE ADMINISTRATIVE BODY'S INVOCATION OF ITS REGULATORY POWER.— On the argument that the certification proceedings were conducted by the FDA in the exercise of its "regulatory powers" and, therefore, beyond judicial review, the Court holds that it has the power to review all acts and decisions where there is a commission of grave abuse of discretion. No less than the Constitution decrees that the Court must exercise its duty to ensure that no grave abuse of discretion amounting to lack or excess of jurisdiction is committed by any branch or instrumentality of the Government. Such is committed when there is a violation of the constitutional mandate that "no person is deprived of life, liberty, and property without due process of law." The Court's power cannot be curtailed by the FDA's invocation of its regulatory power.

3. ID.; ID.; DUE PROCESS; SUBSTANTIVE DUE PROCESS DISTINGUISHED FROM PROCEDURAL DUE PROCESS. —Due process of law has two aspects: substantive and procedural. In order that a particular act may not be impugned as violative of the due process clause, there must be compliance with both the substantive and the procedural requirements thereof. Substantive due process refers to the intrinsic validity of a law that interferes with the rights of a person to his property. Procedural due process, on the other hand, means compliance with the procedures or steps, even periods, prescribed by the statute, in conformity with the standard of fair play and without arbitrariness on the part of those who are called upon to administer it.

4. ID.; ID.; ID.; PETITIONERS WERE DEPRIVED OF THEIR CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW.— The undisputed fact is that the petitioners were deprived of their constitutional right to due process of law. As expounded

by the Court, what it found to be primarily deplorable is the failure of the respondents to act upon, much less address, the various oppositions filed by the petitioners against the product registration, recertification, procurement, and distribution of the questioned contraceptive drugs and devices. Instead of addressing the petitioners' assertion that the questioned contraceptive drugs and devices fell within the definition of an "abortifacient" under Section 4(a) of the RH Law because of their "secondary mechanism of action which induces abortion or destruction of the fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb," the respondents chose to ignore them and proceeded with the registration, recertification, procurement, and distribution of several contraceptive drugs and devices.

5. ID.; ID.; ID.; DUE PROCESS MUST BE COMPLIED WITH IN THE APPROVAL OF THE CONTRACEPTIVE DRUGS OR DEVICES. — As outlined by the respondents themselves, the steps by which the FDA approves contraceptive drugs or devices, demand compliance with the requirements of due process x x x. The Court notes that the x x x procedure is deficient insofar as it only allows public comments to cases of *re-certification*. It fails to allow the public to comment in cases where a reproductive drug or device is being subject to the certification process *for the first time*. This is **clearly in contravention of the mandate of the Court in *Imbong* that the IRR should be amended to conform to it**. More importantly, the Court notes that *Step 5* requires the FDA to issue a **notice** to all concerned MAHs and require them to submit scientific evidence that their product is non-abortifacient; and that *Step 6* requires the posting of the list of contraceptive products which were applied for re-certification **for public comments** in the FDA website. **If an opposition or adverse comment is filed on the ground that the drug or devise has abortifacient features or** violative of the RH Law, based on the pronouncements of the Court in *Imbong* or any other law or rule, the FDA is duty-bound to take into account and consider the basis of the opposition. To conclude that product registration, recertification, procurement, and distribution of the questioned contraceptive drugs and devices by the FDA in the exercise of its regulatory power need not comply with the requirements of due process would render the issuance of notices to concerned MAHs and the posting of a list of contraceptives for public

comment a meaningless exercise. Concerned MAHs and the public in general will be deprived of any significant participation if what they will submit will not be considered.

6. ID.; ID.; ID.; CARDINAL RIGHTS OF PARTIES IN ADMINISTRATIVE PROCEEDINGS.— In *Ang Tibay v. CIR*, the Court laid down the cardinal rights of parties in administrative proceedings, as follows: 1) The right to a hearing, which includes the right to present one's case and submit evidence in support thereof; 2) The tribunal must consider the evidence presented; 3) The decision must have something to support itself; 4) The evidence must be substantial; 5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; 6) The tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy and not simply accept the views of a subordinate in arriving at a decision; and 7) The board or body should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered.

7. ID.; ID.; ID.; A FORMAL TRIAL-TYPE HEARING IS NOT ESSENTIAL TO DUE PROCESS; IT IS ENOUGH THAT THE PARTIES ARE GIVEN A FAIR AND REASONABLE OPPORTUNITY TO EXPLAIN THEIR RESPECTIVE SIDES OF THE CONTROVERSY AND TO PRESENT SUPPORTING EVIDENCE ON WHICH A FAIR DECISION CAN BE BASED. — The Court is of the view that the FDA need not conduct a trial-type hearing. Indeed, due process does not require the conduct of a trial-type hearing to satisfy its requirements. All that the Constitution requires is that the FDA afford the people their right to due process of law and decide on the applications submitted by MAHs after affording the oppositors like the petitioners a genuine opportunity to present their science-based evidence. [T]his the FDA failed to do. It simply ignored the opposition of the petitioners. In the case of *Perez, et al. v. Philippine Telegraph and Telephone Company, et al.*, it was stated that: A formal trial-type hearing is not even essential to due process. It is enough that the parties are given a fair and reasonable opportunity to explain their respective sides of the controversy and to present supporting evidence on which a fair decision can be based.

8. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE BODY; THE FOOD AND DRUG ADMINISTRATION NEED NOT BE BOUND OR LIMITED BY THE EVIDENCE ADDUCED BY THE PARTIES, AND IT IS ALSO NOT BOUND BY THE PRINCIPLE OF *STARE DECISIS* OR *RES JUDICATA*. — As applied to certification proceedings at the FDA, "substantial evidence" refers to the **best scientific evidence available**, "including but not limited to: meta analyses, systematic reviews, national clinical practice guidelines where available, and recommendations of international medical organizations," needed to support a conclusion whether a contraceptive drug or device is an abortifacient or not. The FDA need not be bound or limited by the evidence adduced by the parties, but it can conduct its own search for related scientific data. It can also consult other technical scientific experts known in their fields. It is also not bound by the principle of *stare decisis* or *res judicata*, but may update itself and cancel certifications *motu proprio* when new contrary scientific findings become available or there arise manifest risks which have not been earlier predicted.

9. ID.; ID.; ID.; THE FOOD AND DRUG ADMINISTRATION IS NOT EXCUSED FROM COMPLYING WITH THE REQUIREMENTS OF DUE PROCESS AND THE ACTION THEREOF IN CERTIFICATION PROCEEDINGS IS NOT BEYOND JUDICIAL REVIEW.— The fact that any appeal to the courts will involve scientific matters will neither place the actions of the respondents beyond the need to comply with the requirements of *Ang Tibay* nor place the actions of the FDA in certification proceedings beyond judicial review. It should be pointed out that nowhere in Batas Pambansa Blg. 129, as amended, are the courts ousted of their jurisdiction whenever the issues involve questions of scientific nature. A court is not considered incompetent either in reviewing the findings of the FDA simply because it will be weighing the scientific evidence presented by both the FDA and its oppositors in determining whether the contraceptive drug or device has complied with the requirements of the law. Although the FDA is not strictly bound by the technical rules on evidence, as stated in the Rules of Court, or it cannot be bound by the principle of *stare decisis* or *res judicata*, it is not excused from complying with the requirements of due process.

10. ID.; ID.; ID.; THE DECISION OF THE FOOD AND DRUG ADMINISTRATION MUST BE APPEALED TO THE OFFICE OF THE PRESIDENT.— [S]ection 32 of R.A. No. 3720 and Section 9 of Executive Order (*E.O.*) No. 247 provide that any decision by the FDA would then be appealable to the Secretary of Health, whose decision, in turn, may be appealed to the Office of the President (*OP*). x x x. In view thereof, the Court should modify that part of the Decision which allows direct appeal of the FDA decision to the Court of Appeals. As stated in the said decision, the FDA decision need not be appealed to the Secretary of Health because she herself is a party herein. Considering that the Executive Secretary is not a party herein, the appeal should be to the OP as provided in Section 9.

11. REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION: LIFTING OF THE TEMPORARY RESTRAINING ORDER CONSIDERED PREMATURE AND PRESUMPTUOUS.— [I]t should be clarified that the Decision simply enjoined the respondents from registering, recertifying, procuring, and administering only those contraceptive drugs and devices which were the subjects of the petitioners' opposition, specifically Implanon and Implanon NXT. It never meant to enjoin the processing of the entire gamut of family planning supplies that have been declared as unquestionably non-abortifacient. Moreover, the injunction issued by the Court was only subject to the condition that the respondents afford the petitioners a genuine opportunity to their right to due process. As the Decision explained, the Court cannot lift the TRO prior to the summary hearing to be conducted by the FDA. To do so would render the summary hearing an exercise in futility. Specifically, the respondents would want the Court to consider their argument that Implanon and Implanon NXT have no abortifacient effects. According to them, "the FDA tested these devices for safety, efficacy, purity, quality, and non-abortiveness prior to the issuance of certificates of registration and recertification, and after the promulgation of Imbong." **The Court, however, cannot make such determination or pronouncement at this time.** To grant its prayer to lift the TRO would be **premature** and **presumptuous**. Any declaration by the Court at this time would have **no basis** because the FDA, which has the mandate and expertise on the matter, has to first resolve the controversy pending before its office.

LEONEN, *J.*, *concurring opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCY; QUASI-JUDICIAL FUNCTIONS AND PURELY EXECUTIVE OR ADMINISTRATIVE FUNCTIONS, DISTINGUISHED.— Considering the Food and Drug Administration's heavy reliance on scientific data and the highly technical nature of the certification and non- certification process, the proceeding is not quasi-judicial in nature. An administrative agency performs a quasi-judicial function when it has "the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law." Its quasi-judicial functions require the agency to "investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature." Otherwise stated, an agency performs a quasi-judicial function when it determines what the law is and adjudicates the rights of the parties before it. An administrative agency's quasi-judicial functions should not be confused with its administrative or executive functions. A purely executive or administrative function, connotes, or pertains, to "administration, especially management, as by managing or conducting, directing or superintending, the execution, application, or conduct of persons or things." It does not entail an opportunity to be heard, the production and weighing of evidence, and a decision or resolution thereon. On the other hand, an administrative agency exercises its quasi--judicial function when "it performs *in a judicial manner* an act which is essentially of an executive or administrative nature." Thus, while the administrative agency is not expected to act like a court of law, it is still expected to listen to both sides and to render a decision explaining its reasons for its decision.

2. ID.; ID.; ID.; THE STANDARD OF EVIDENCE REQUIRED TO ESTABLISH THE EXISTENCE OF A FACT BEFORE A QUASI-JUDICIAL TRIBUNAL IS SUBSTANTIAL EVIDENCE; SUBSTANTIAL EVIDENCE OF A DRUG'S EFFECTIVENESS, DEFINED.— [T]he Food and Drug Administration requires scientific, medical, and pharmacological

data as well as numerous clinical studies in its registration, certification, and re-certification procedures. Due to the highly technical nature of the processes, none of the standards and procedures required in quasi-judicial proceedings would be applicable to it. The standard of evidence required to establish the existence of a fact before a quasi-judicial tribunal is substantial evidence. Substantial evidence is defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." The United States Food and Drug Administration defines substantial evidence of a drug's effectiveness as: "evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and responsibly be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof."

3. ID.; ID.; THE FOOD AND DRUG ADMINISTRATION; REPUBLIC ACT NO. 10354 (THE RESPONSIBLE PARENTHOOD AND REPRODUCTIVE HEALTH ACT OF 2012); MANDATES THAT THE FOOD AND DRUG ADMINISTRATION USE THE "BEST EVIDENCE AVAILABLE" TO ASCERTAIN WHETHER A CONTRACEPTIVE IS NON-ABORTIFACIENT; TERM "BEST EVIDENCE AVAILABLE," CONSTRUED.— Republic Act No. 10354 mandates that the Food and Drug Administration use the "best evidence available" to ascertain whether a contraceptive is non-abortifacient: x x x It would be absurd to presume that any evidence, which a reasonable mind may accept as adequate, would yield the same kind of evidence as clinical investigations by scientific experts, meta-analyses, systematic reviews, national clinical practice guidelines, and recommendations of international medical organizations. It also requires a review of the physiology of the reproductive system, the classification, regulatory status, and mechanism of hormonal contraceptives in other countries, and a review of all available scientific data in medical journals and textbooks. An independent evidence review group composed of leading experts in the fields of pharmacodynamics, medical research, evidence-based

medicine, and other relevant fields may also be constituted to review the available data. What the law requires is not just a reasonable mind, but also scientific, medical, and pharmacological expertise. The necessary evidence in registration, certification, and re-certification proceedings cannot be equated to that required in a quasi-judicial tribunal. Quasi-judicial agencies are also required to adjudicate only on the evidence submitted by the parties. In certification and re-certification proceedings, however, the Food and Drug Administration cannot merely rely on the evidence submitted by the Marketing Authorization Holder or of the oppositors. The law requires it to use the "best evidence available." This means that it must consider external and extraneous evidence not necessarily submitted by the applicants or oppositors, such as clinical studies, medical journals and textbooks, and safety guidelines and standards in other countries.

4. ID.; ID.; ID.; THE ISSUANCE OF AUTHORIZATIONS, INCLUDING CERTIFICATES OF PRODUCT REGISTRATION, IS PART OF THE REGULATORY FUNCTIONS; THE COURT OF APPEALS DOES NOT HAVE THE TECHNICAL EXPERTISE TO REVIEW OR OVERRULE THE SCIENTIFIC, MEDICAL, AND PHARMACOLOGICAL DATA OF THE FOOD AND DRUG ADMINISTRATION.— Rulings of quasi-judicial agencies are also appealable to the Court of Appeals under Rule 43 of the Rules of Court. The Court of Appeals, however, does not have the technical expertise to review or overrule the scientific, medical, and pharmacological data of the Food and Drug Administration. Even the law recognizes the Food and Drug Administration's expertise on the matter x x x In *Imbong v. Ochoa*, this Court further recognized that the Food and Drug Administration "has the expertise to determine whether a particular hormonal contraceptive or intrauterine device is safe and non-abortifacient." The Court of Appeals does not have the required medical and pharmacological background to review the numerous clinical studies performed by scientific, medical, and pharmacological experts, meta-analyses, systemic reviews, medical journals, and textbooks. It is not equipped to conclude matters of a highly technical nature. It cannot adjudicate on conflicting scientific studies to conclude

which would have more weight. For this reason, the law specifically assigned the procedure to a specialized agency as part of its executive regulatory function. It is also for this reason that the Implementing Rules and Regulations of Republic Act No. 9711 include the issuance of authorizations, including Certificates of Product Registration, as part of its regulatory functions, and not its quasi-judicial functions.

5. ID.; ID.; ID.; ID.; THE DETERMINATION AND CERTIFICATION THEREOF THAT A CONTRACEPTIVE OR INTRAUTERINE DEVICE IS MEDICALLY SAFE AND NON-ABORTIFACIENT IS AN EXERCISE OF ITS REGULATORY FUNCTION.— Unlike other quasi-judicial proceedings, legal concepts such as *res judicata*, *stare decisis*, and finality of decisions also have no application in certification and re-certification proceedings. Science relies on innovation. Even if the scientific community conducts repeated scientific testing and continuous research, conflicting studies and research may always arise to challenge each conclusion. The issuance of a Certificate of Product Registration does not bind the Food and Drug Administration from further testing and investigation. The long-term effects of a new drug are not determined by a final and executory Court of Appeals or Supreme Court decision. Hence, any person may file an action once the health product is "found to have caused the death, illness or serious injury to a consumer or patient, or is found to be imminently injurious, unsafe, [and] dangerously deceptive."

6. ID.; ID.; ID.; THE DETERMINATION AND CERTIFICATION THEREOF THAT A CONTRACEPTIVE OR INTRAUTERINE DEVICE IS MEDICALLY SAFE AND NON-ABORTIFACIENT IS AN EXERCISE OF ITS REGULATORY FUNCTION.— The Food and Drug Administration is mandated to conduct Post Marketing Surveillance of contraceptives even after the issuance of the Certificate of Product Registration x x x. Post Marketing Surveillance is conducted through sampling, inspecting drug establishments and outlets, and investigating adverse drug reactions. Marketing Authorization Holders are likewise required to submit Periodic Safety Update Reports at regular intervals and Post-Authorization Safety Studies/Post-Authorization Efficacy Studies. Marketing Authorization Holders may also

conduct a Phase IV clinical trial when necessary. Certifications of contraceptives cannot be considered "final and executory" if the Food and Drug Administration conducts further examinations on patients for health and pregnancy risks even after it certifies to its non-abortifacience or if the Marketing Authorization Holders are required to monitor their products and conduct further testing. The Food and Drug Administration's mandate under Republic Act No. 10354 to determine and certify if a contraceptive or intrauterine device is medically safe and non-abortifacient is an exercise of its regulatory function for the "[protection] and [promotion] of the right to health of the Filipino people." The "right of the State as *parens patriae*" is a role that the Food and Drug Administration, as a regulatory agency, undertakes.

7. ID.; ID.; ID.; ID.; CERTIFICATION AND RE-CERTIFICATION PROCEEDINGS OF CONTRACEPTIVES WHICH ARE REGULATORY IN NATURE DO NOT REQUIRE TRIAL-TYPE PROCEEDINGS; PUBLIC PARTICIPATION IS REQUIRED ONLY AS A MATTER OF TRANSPARENCY.— In a quasi-judicial proceeding, interested or affected parties must first be given the opportunity to be heard. The primary consideration of administrative due process is the fairness in the procedure. Proceedings that are regulatory in nature, such as certification and re-certification proceedings of contraceptives, do not require trial-type proceedings. Public participation is required only as a matter of transparency. Oppositors are allowed to submit any data that addresses the science involved, which they believe may overturn the findings of the Food and Drug Administration. It is the duty of the Food and Drug Administration in certification and re-certification proceedings to acknowledge and consider any opposition from the public and address their concerns.

8. ID.; ID.; RESPONSIBLE PARENTHOOD AND REPRODUCTIVE HEALTH ACT OF 2012 (RH LAW); ABORTIFACIENT, DEFINED; DRUGS OR CONTRACEPTIVES THAT MERELY PREVENT FERTILIZATION ARE NOT *ABORTIFACIENT*.— [I]t must be clarified that an *abortifacient* under Section 4 (a) of the Responsible Parenthood and Reproductive Health Act of 2012 (RH Law) is: SEC. 4. Definition of Terms. – For the purpose

of this Act, the following terms shall be defined as follows: (a) *Abortifacient* refers to any drug or device that induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon the determination of the FDA. Drugs or contraceptives that merely prevent fertilization are not *abortifacient*. Normally, fertilization occurs when a single sperm cell penetrates an egg cell inside a woman's body. In females, egg cells are produced through ovulation.

9. ID.; ID.; ID.; THE QUESTION ON WHEN LIFE BEGINS IS BOTH A SCIENTIFIC AND MEDICAL ISSUE THAT CAN ONLY BE DECIDED UPON PROPER HEARING AND EVIDENCE.— It bears stressing that this Court, in *Imbong v. Ochoa*, recognized that the question on when life begins is both a scientific and medical issue that can only be decided upon proper hearing and evidence. The ponente in *Imbong*, who is also the ponente in this case, clarified that the notion that life begins at fertilization was his personal opinion and was a view not shared by all members of this Court. Equating conception with fertilization creates the wrong impression that this Court had already determined the exact moment of when life begins. It glosses over the fact that medicine and science are evolving fields of study and disregards the ongoing debate on the matter. The fields of science and medicine provide fertile grounds for discourse on the commencement of life. Some say that there is life only upon the implantation of a zygote in the mother's womb. Proponents of this theory assert that the viability of a fertilized ovum should be considered in determining when life begins. This is significant with regard to new discoveries in reproductive science. On the other hand, there are those who say that human life begins only when organs and body systems have already developed and are functioning as a whole. However, some put greater emphasis on the presence of an active brain. The debate transcends the fields of science and medicine. There are different religious interpretations and opinions on the commencement of life.

10. ID.; ID.; ID.; PARTIES DO NOT HAVE A MONOPOLY OVER THE PROTECTION OF THE LIFE OF THE UNBORN.— Under Section 1, Article III of the Constitution

"no person shall be deprived of life, liberty, or property without due process of law." However, it is not petitioners' life, liberty, or property that would be affected by a certification and re-certification proceeding. Petitioners, not being Market Authorization Holders, possess no property right that may be infringed by the Food and Drug Administration. There is also no merit to the claim that petitioners' right to life would also be violated, much less affected, by a certification and re-certification proceeding. In the grand scheme of things, it is the unborn whose life is at stake. Though the cause of petitioners is noble, by no stretch of the imagination could they claim the exclusive right to protect the life of the unborn. The Food and Drug Administration, in the exercise of its regulatory function and as *parens patriae*, carries the significant task of safeguarding the life of the unborn when it determines whether a drug is medically safe for consumption. Parties do not have a monopoly oyer the protection of the life of the unborn.

11. ID.; ID.; ID.; THE PROCESS OF CERTIFICATION AND RE-CERTIFICATION IS BURDENED WITH SEVERE PUBLIC INTEREST; THUS COMMENTS AND CONTRIBUTIONS AT ANY STAGE OF THE PROCESS OF CERTIFICATION MADE BY THOSE CONCERNED SHOULD NOT BE SIMPLY RECEIVED AND FILED, BUT THE SAME SHOULD BE ADDRESSED BY THE FOOD AND DRUG ADMINISTRATION.— The approval of any drug as food product destined for public use is not a matter only between the applicant and the regulator. It affects public health. Ultimately, it is the consumers who are affected. Thus, the process of certification and re-certification is burdened with severe public interest. Thus, comments and contributions at any stage of the process of certification made by those concerned should not be simply received and filed. The Food and Drug Administration should have gone beyond acknowledgment. It should have summarized the issues and contentions in opposition and addressed them. No trial type or even summary hearing is required. Rather than due process of law, this is the essence of public participation enshrined in our Constitution.

APPEARANCES OF COUNSEL

Maria Concepcion S. Noche for petitioners in G.R. Nos. 217872 & 221866.
Office of the Solicitor General for public respondents.

R E S O L U T I O N

MENDOZA, *J.*:

Subject of this resolution is the Omnibus Motion[1] filed by the respondents, thru the Office of the Solicitor General *(OSG),* seeking partial reconsideration of the August 24, 2016 Decision *(Decision)*,[2] where the Court resolved the: [1] Petition for Certiorari, Prohibition, Mandamus with Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Prohibitory and Mandatory Injunction (G.R. No. 217872); and the [2] Petition for Contempt of Court (G.R. No. 221866), in the following manner:

> WHEREFORE, the case docketed as G.R No. 217872 is hereby REMANDED to the Food and Drugs Administration which is hereby ordered to observe the basic requirements of due process by conducting a hearing, and allowing the petitioners to be heard, on the re-certified, procured and administered contraceptive drugs and devices, including Implanon and Implanon NXT, and to determine whether they are abortifacients or non-abortifacients.
>
> Pursuant to the expanded jurisdiction of this Court and its power to issue rules for the protection and enforcement of constitutional rights, the Court hereby:
>
> 1. DIRECTS the Food and Drug Administration to formulate the rules of procedure in the screening, evaluation and approval of all contraceptive drugs and devices that will be used under Republic Act No. 10354. The rules of procedure shall contain

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[1] *Rollo*, pp. 406-744.

[2] *Id*. at 382-405.

the following minimum requirements of due process: (a) publication, notice and hearing, (b) interested parties shall be allowed to intervene, (c) the standard laid down in the Constitution, as adopted under Republic Act No. 10354, as to what constitutes allowable contraceptives shall be strictly followed, that is, those which do not harm or destroy the life of the unborn from conception/fertilization, (d) in weighing the evidence, all reasonable doubts shall be resolved in favor of the protection and preservation of the right to life of the unborn from conception/fertilization, and (e) the other requirements of administrative due process, as summarized in *Ang Tibay v. CIR*, shall be complied with.

2. DIRECTS the Department of Health in coordination with other concerned agencies to formulate the rules and regulations or guidelines which will govern the purchase and distribution/ dispensation of the products or supplies under Section 9 of Republic Act No. 10354 covered by the certification from the Food and Drug Administration that said product and supply is made available on the condition that it will not be used as an abortifacient subject to the following minimum due process requirements: (a) publication, notice and hearing, and (b) interested parties shall be allowed to intervene. The rules and regulations or guidelines shall provide sufficient detail as to the manner by which said product and supply shall be strictly regulated in order that they will not be used as an abortifacient and in order to sufficiently safeguard the right to life of the unborn.

3. DIRECTS the Department of Health to generate the complete and correct list of the government's reproductive health programs and services under Republic Act No. 10354 which will serve as the template for the complete and correct information standard and, hence, the duty to inform under Section 23(a)(l) of Republic Act No. 10354. The Department of Health is DIRECTED to distribute copies of this template to all health care service providers covered by Republic Act No. 10354.

The respondents are hereby also ordered to amend the Implementing Rules and Regulations to conform to the rulings and guidelines in G.R. No. 204819 and related cases.

The above foregoing directives notwithstanding, within 30 days from receipt of this disposition, the Food and Drugs Administration should commence to conduct the necessary hearing guided by the cardinal rights of the parties laid down in *CIR v. Ang Tibay.*

Pending the resolution of the controversy, the motion to lift the Temporary Restraining Order is DENIED.

With respect to the contempt petition, docketed as G.R No. 221866, it is hereby DENIED for lack of concrete basis.

SO ORDERED.[3]

Arguments of the Respondents

Part 1: Due Process need not be complied with as the questioned acts of the Food and Drug Administration (FDA) were in the exercise of its Regulatory Powers

In the subject Omnibus Motion, the respondents argued that their actions should be sustained, even if the petitioners were not afforded notice and hearing, because the contested acts of registering, re-certifying, procuring, and administering contraceptive drugs and devices were all done in the exercise of its regulatory power.[4] They contended that considering that the issuance of the certificate of product registration *(CPR)* by the FDA under Section 7.04, Rule 7[5] of the Implementing Rules and Regulations of the Republic Act *(R.A.)* No. 10354 *(RH-IRR)* did not involve the adjudication of the parties' opposing

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[3] *Id*. at 402-403.

[4] *Id*. at 414-430.

[5] Section 7.04. FDA Certification of Family Planning Supplies.

The FDA must certify that a family planning drug or device is not an abortifacient in dosages of its approved indication (for drugs) or intended use (for devices) prior to its inclusion in the EDL. The FDA shall observe the following guidelines in the determination of whether or not a drug or device is an abortifacient:

rights and liabilities through an adversarial proceeding, the due process requirements of notice and hearing need not be complied with.[6]

Stated differently, the respondents assert that as long as the act of the FDA is exercised pursuant to its regulatory power, it need not comply with the due process requirements of notice and hearing.

Corollary to this, the respondents wanted the Court to consider that the FDA had delineated its functions among different persons and bodies in its organization. Thus, they asked the Court to make a distinction between the ***"quasi-judicial powers"*** exercised by the **Director-General of the FDA** under Section 2(b)[7] of

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a) As defined in Section 3.01 (a) of these Rules, a drug or device is deemed to be an abortifacient if it is proven to primarily induce abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb;

b) The following mechanisms do not constitute abortion: the prevention of ovulation; the direct action on sperm cells prior to fertilization; the thickening of cervical mucus; and any mechanism acting exclusively prior to the fertilization of the egg by the sperm;

c) In making its determination, the FDA shall use the best evidence available, including but not limited to: meta-analyses, systematic reviews, national clinical practice guidelines where available, and recommendations of international medical organizations

d) In the presence of conflicting evidence, the more recent, better-designed, and larger studies shall be preferred, and the conclusions found therein shall be used to determine whether or not a drug or device is an abortifacient; and

e) Should the FDA require additional expertise in making its determination, an independent evidence review group (ERG) composed of leading experts in the fields of pharmacodynamics, medical research, evidence-based medicine, and other relevant fields may be convened to review the available evidence. The FDA shall then issue its certification based on the recommendations of the ERG.

[6] *Rollo*, pp. 414-416.

[7] Sec. 2. *Duties and Functions of the Director-General* x x x

b. *Quasi-Judicial Powers, Duties and Functions*:

x x x x x x x x x

Article 3, Book I of the Implementing Rules and Regulations *(IRR)* of R.A. No. 9711,[8] and the ***"regulatory/administrative powers"*** exercised by **the FDA** under Section 2(c)(1)[9] of the same. For the respondents, the distinction given in the above-cited provisions was all but proof that the issuance of CPR did not require notice and hearing.

After detailing the process by which the FDA's Center for Drug Regulation and Research *(CDRR)* examined and tested the contraceptives for non-abortifacience,[10] the respondents stressed that the Decision wreaked havoc on the organizational

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[8] Otherwise known as the Food and Drug Administration Act of 2009.

[9] c. *Regulatory Powers, Duties and Functions*:

x x x x x x x x x

[10] Step 1. Identify contraceptive products in the database. Create another database containing the following details of contraceptive products: generic name, dosage strength and form, brand name (if any), registration number, manufacturer, MAH, and the period of validity of the CPR.

Step 2. Identify contraceptive products which are classified as essential medicines in the Philippine Drug Formulary.

Step 3. Retrieve the contraceptive product's file and the CPR duplicate of all registered contraceptive products. Create a database of the contraceptive product's history, including its initial, renewal, amendment, and/or variation applications.

Step 4. Conduct a preliminary review of the following:

a. general physiology of female reproductive system, including hormones involved, female reproductive cycle, and conditions of the female reproductive system during pregnancy.

b. classification of hormonal contraceptives;

c. regulatory status of the products in benchmark countries; and

d. mechanism of action of hormonal contraceptives based on reputable journals, meta-analyses, systemic reviews, evaluation of regulatory authorities in other countries, textbooks, among others.

Step 5. Issue a notice to all concerned MAHs, requiring them to submit scientific evidence that their product is non-abortifacient, as defined in the RH Law and Imbong.

Step 6. Post a list of contraceptive products which were applied for re-certification for public comments in the FDA website.

Step 7. Evaluate contraceptive products for re-certification.

A. Part I (Review of Chemistry, Manufacture and Controls)

1. Unit Dose and Finished Product Formulation

structure of the FDA, whose myriad of functions had been carefully delineated in the IRR of R.A. No. 9711.[11] The respondents, thus, prayed for the lifting of the Temporary Restraining Order *(TRO).*[12]

Part 2: The requirements of due process need not be complied with as the elements of procedural due process laid down in Ang Tibay v. CIR are not applicable

The respondents further claimed in their omnibus motion that the requirements of due process need not be complied with because the standards of procedural due process laid down in *Ang Tibay v. CIR*[13] were inapplicable considering that: a) substantial evidence could not be used as a measure in determining whether a contraceptive drug or device was abortifacient;[14] b) the courts had neither jurisdiction nor competence to review the findings of the FDA on the non-abortifacient character of contraceptive drugs or devices;[15] c)

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2. Technical Finished Product Specifications
3. Certificate of Analysis

B. Part II (Evaluation of Whether the Contraceptive Product is Abortifacient)

1. Evaluation of the scientific evidence submitted by the applicant and the public.
2. Review and evaluation of extraneous evidence, *e.g.*, scientific journals, meta-analyses, *etc*.

Step 8. Assess and review the documentary requirements submitted by the applicant. Technical reviewers considered scientific evidence such as meta-analyses, systemic reviews, national and clinical practice guidelines and recommendations of international medical organizations submitted by the companies, organizations and individuals to be part of the review. [Emphases and Underling supplied]

[11] Omnibus Motion, p. 37.

[12] *Rollo*, pp. 442-447.

[13] 69 Phil. 635 (1940).

[14] *Rollo*, pp. 430-431.

[15] *Id*. at 431-432, 442.

the FDA was not bound by the rules of admissibility and presentation of evidence under the Rules of Court;[16] and d) the findings of the FDA could not be subject of the rule on *res judicata* and *stare decisis*.[17]

The respondents then insisted that Implanon and Implanon NXT were not abortifacients and lamented that the continued injunction of the Court had hampered the efforts of the FDA to provide for the reproductive health needs of Filipino women. For the respondents, to require them to afford the parties like the petitioners an opportunity to question their findings would cause inordinate delay in the distribution of the subject contraceptive drugs and devices which would have a dire impact on the effective implementation of the RH Law.

The Court's Ruling

After an assiduous assessment of the arguments of the parties, the Court denies the Omnibus Motion, but deems that a clarification on some points is in order.

Judicial Review

The powers of an administrative body are classified into two fundamental powers: *quasi-legislative* and *quasi-judicial*. **Quasi-legislative power**, otherwise known as the power of subordinate legislation, has been defined as the authority delegated by the lawmaking body to the administrative body to adopt rules and regulations intended to carry out the provisions of law and implement legislative policy.[18] "[A] legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof."[19] The

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[16] *Id.* at 432-433.

[17] *Id.* at 433-434.

[18] Cruz, *Philippine Administrative Law*, p. 29 (2007 Edition).

[19] *Commissioner of Customs v. Hypermix Feeds Corporation*, 680 Phil. 681, 689 (2012), citing *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary*, G.R. No. 108524, November 10, 1994, 238 SCRA 63, 69-70.

exercise by the administrative body of its quasi-legislative power through the promulgation of regulations of general application does not, as a rule, require notice and hearing. The only exception being where the Legislature itself requires it and mandates that the regulation shall be based on certain facts as determined at an appropriate investigation.[20]

Quasi-judicial power, on the other hand, is known as the power of the administrative agency to determine questions of fact to which the legislative policy is to apply, in accordance with the standards laid down by the law itself.[21] As it involves the exercise of discretion in determining the rights and liabilities of the parties, the proper exercise of quasi-judicial power requires the concurrence of two elements: *one*, jurisdiction which must be acquired by the administrative body and *two*, **the observance of the requirements of due process**, that is, the **right to notice and hearing**.[22]

On the argument that the certification proceedings were conducted by the FDA in the exercise of its "regulatory powers" and, therefore, beyond judicial review, the Court holds that it has the power to review all acts and decisions where there is a commission of grave abuse of discretion. No less than the Constitution decrees that the Court must exercise its duty to ensure that no grave abuse of discretion amounting to lack or excess of jurisdiction is committed by any branch or instrumentality of the Government. Such is committed when there is a violation of the constitutional mandate that "no person is deprived of life, liberty, and property without due process of law." The Court's power cannot be curtailed by the FDA's invocation of its regulatory power.

In so arguing, the respondents cited Atty. Carlo L. Cruz in his book, *Philippine Administrative Law*.

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[20] Cruz, *Philippine Administrative Law*, *supra* note 18 at 67.

[21] *Id.* at 88, citing *Gudmindson v. Cardollo*, 126 F2d. 521.

[22] *Id.* at 91.

Lest there be any inaccuracy, the relevant portions of the book cited by the respondents are hereby quoted as follows:

x x x x x x x x x.

B. The Quasi-Judicial Power

x x x x x x x x x

2. *Determinative Powers*

To better enable the administrative body to exercise **its quasi judicial authority**, it is also vested with what is known as *determinative* powers and functions.

Professor Freund classifies them generally into the *enabling* powers and the *directing* powers. The latter includes the *dispensing*, the *examining*, and the *summary* powers.

The *enabling powers* are those that permit the doing of an act which the law undertakes to *regulate* and which would be unlawful with government approval. The most common example is the issuance of licenses to engage in a particular business or occupation, like the operation of a liquor store or restaurant. x x x.[23] [Emphases and underscoring supplied]

From the above, two things are apparent: one, the "enabling powers" cover "regulatory powers" as defined by the respondents; and two, they refer to a subcategory of a quasi-judicial power which, as explained in the Decision, requires the compliance with the twin requirements of notice and hearing. Nowhere from the above-quoted texts can it be inferred that the exercise of "regulatory power" places an administrative agency beyond the reach of judicial review. When there is grave abuse of discretion, such as denying a party of his constitutional right to due process, the Court can come in and exercise its power of judicial review. It can review the challenged acts, whether exercised by the FDA in its ministerial, quasi-judicial or regulatory power. In the past, the Court exercised its power of judicial review over acts and decisions of agencies exercising

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[23] Cruz, *Philippine Administrative Law*, *supra* note 18 at 41.

their regulatory powers, such as DPWH,[24] TRB,[25] NEA,[26] and the SEC,[27] among others. In *Diocese of Bacolod v. Commission on Elections*,[28] the Court properly exercised its power of judicial review over a Comelec resolution issued in the exercise of its regulatory power.

Clearly, the argument of the FDA is flawed.

Petitioners were Denied their Right to Due Process

Due process of law has two aspects: substantive and procedural. In order that a particular act may not be impugned as violative of the due process clause, there must be compliance with both the substantive and the procedural requirements thereof.[29] Substantive due process refers to the intrinsic validity of a law that interferes with the rights of a person to his property.[30] Procedural due process, on the other hand, means compliance with the procedures or steps, even periods, prescribed by the statute, in conformity with the standard of fair play and without arbitrariness on the part of those who are called upon to administer it.[31]

The undisputed fact is that the petitioners were deprived of their constitutional right to due process of law.

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[24] *Mirasol, et al. v. DPWH and TRB*, 523 Phil. 713, (2006).

[25] *Id*.

[26] *ZAMECO II Board of Directors v. Castillejos Consumers Ass'n. Inc. (CASCONA), et al.*, 600 Phil. 365, (2009).

[27] *SEC v. Court of Appeals,* 316 Phil. 903 (1995).

[28] G.R. No. 205728, January 21, 2015, 747 SCRA 1. ("This case pertains to acts of COMELEC in the implementation of its **regulatory powers**. When it issued the notice and letter, the COMELEC was allegedly enforcing election laws.")

[29] *Republic of the Phils. v. Sandiganbayan*, 461 Phil. 598 (2003).

[30] *Ynot v. Intermediate Appellate Court*, No. 74457, March 20, 1987, 148 SCRA 659.

[31] *Tatad v. Sandiganbayan*, 242 Phil. 563, 575-576 (1988).

As expounded by the Court, what it found to be primarily deplorable is the failure of the respondents to act upon, much less address, the various oppositions filed by the petitioners against the product registration, recertification, procurement, and distribution of the questioned contraceptive drugs and devices. Instead of addressing the petitioners' assertion that the questioned contraceptive drugs and devices fell within the definition of an "abortifacient" under Section 4(a) of the RH Law because of their "secondary mechanism of action which induces abortion or destruction of the fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb,"[32] the respondents chose to ignore them and proceeded with the registration, recertification, procurement, and distribution of several contraceptive drugs and devices.

A cursory reading of the subject Omnibus Motion shows that the respondents proffer no cogent explanation as to why they did not act on the petitioners' opposition. As stated by the Court in the Decision, rather than provide concrete action to meet the petitioners' opposition, the respondents simply relied on their challenge questioning the propriety of the subject petition on technical and procedural grounds.[33] The Court, thus, finds the subject motion to be simply a rehash of the earlier arguments presented before, with the respondents still harping on the peculiarity of the FDA's functions to exempt it from compliance with the constitutional mandate that "no person shall be deprived of life, liberty and property without due process of law."

The law and the rules demand compliance with due process requirements

A reading of the various provisions, cited by the respondents in support of their assertion that due process need not be complied with in the approval of contraceptive drugs or devices, all the

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[32] *Rollo* (G.R. No. 217872), p. 18.

[33] Decision, p. 15.

more reinforces the Court's conclusion that the FDA did fail to afford the petitioners a genuine opportunity to be heard.

As outlined by the respondents themselves, the steps by which the FDA approves contraceptive drugs or devices, demand compliance with the requirements of due process *viz:*

Step 1. Identify contraceptive products in the database. Create another database containing the following details of contraceptive products: generic name, dosage strength and form, brand name (if any), registration number, manufacturer, MAH, and the period of validity of the CPR.

Step 2. Identify contraceptive products which are classified as essential medicines in the Philippine Drug Formulary.

Step 3. Retrieve the contraceptive product's file and the CPR duplicate of all registered contraceptive products. Create a database of the contraceptive product's history, including its initial, renewal, amendment, and/or variation applications.

Step 4. Conduct a preliminary review of the following:

a. general physiology of female reproductive system, including hormones involved, female reproductive cycle, and conditions of the female reproductive system during pregnancy.
b. classification of hormonal contraceptives;
c. regulatory status of the products in benchmark countries; and
d. mechanism of action of hormonal contraceptives based on reputable journals, meta-analyses, systemic reviews, evaluation of regulatory authorities in other countries, textbooks, among others.

Step 5. Issue a notice to all concerned MAHs, requiring them to submit scientific evidence that their product is non-abortifacient, as defined in the RH Law and *Imbong*.

Step 6. Post a list of contraceptive products which were applied for re-certification for public comments in the FDA website.

Step 7. Evaluate contraceptive products for re-certification.

A. Part I (Review of Chemistry, Manufacture and Controls)

1. Unit Dose and Finished Product Formulation
2. Technical Finished Product Specifications
3. Certificate of Analysis

B. Part II (Evaluation of Whether the Contraceptive Product is Abortifacient)

1. Evaluation of the scientific evidence submitted by the applicant and the public.
2. Review and evaluation of extraneous evidence, e.g., scientific journals, meta-analyses, etc.

Step 8. Assess and review the documentary requirements submitted by the applicant. Technical reviewers considered scientific evidence such as meta-analyses, systemic reviews, national and clinical practice guidelines and recommendations of international medical organizations submitted by the companies, organizations and individuals, to be part of the review.[34] [Emphases and Underlining supplied]

The Court notes that the above-outlined procedure is deficient insofar as it only allows public comments to cases of *re-certification*. It fails to allow the public to comment in cases where a reproductive drug or device is being subject to the certification process *for the first time*. This is **clearly in contravention of the mandate of the Court in *Imbong* that the IRR should be amended to conform to it.**

More importantly, the Court notes that *Step 5* requires the FDA to issue a **notice** to all concerned MAHs and require them to submit scientific evidence that their product is non-abortifacient; and that *Step 6* requires the posting of the list of contraceptive products which were applied for re-certification **for public comments** in the FDA website.

If an opposition or adverse comment is filed on the ground that the drug or devise has abortifacient features or violative of the RH Law, based on the pronouncements of the Court in *Imbong* or any other law or rule, the FDA is duty-bound to take into account and consider the basis of the opposition.

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[34] *Rollo*, pp. 418-419.

To conclude that product registration, recertification, procurement, and distribution of the questioned contraceptive drugs and devices by the FDA in the exercise of its regulatory power need not comply with the requirements of due process would render the issuance of notices to concerned MAHs and the posting of a list of contraceptives for public comment a meaningless exercise. Concerned MAHs and the public in general will be deprived of any significant participation if what they will submit will not be considered.

Section 7.04, Rule 7 of the IRR of the RH Law *(RH-IRR)*,[35] relied upon by the respondents in support of their claims, **expressly allows the consideration of conflicting evidence**, such as that supplied by the petitioners in support of their

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[35] Section 7.04. *FDA Certification of Family Planning Supplies.*

The FDA must certify that a family planning drug or device is not an abortifacient in dosages of its approved indication (for drugs) or intended use (for devices) prior to its inclusion in the EDL. The FDA shall observe the following guidelines in the determination of whether or not a drug or device is an abortifacient:

a) As define in Section 3.01 (a) of these Rules, a drug or device is deemed to be an abortifacient if it is proven to primarily induce abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb;

b) The following mechanisms do not constitute abortion: the prevention of ovulation; the direct action on sperm cells prior to fertilization; the thickening of cervical mucus; and any mechanism acting exclusively prior to the fertilization of the egg by the sperm;

c) In making its determination, the FDA shall **use the best evidence available**, including but not limited to: meta-analyses, systematic reviews, national clinical practice guidelines where available, and recommendations of international medical organizations;

d) In the presence of conflicting evidence, the more recent, better-designed, and larger studies shall be preferred, and the conclusions found therein shall be used to determine whether or not a drug or device is an abortifacient; and

e) Should the FDA require additional expertise in making its determination, **an independent evidence review group (ERG) composed of leading experts in the fields of pharmacodynamics, medical research, evidence-based medicine, and other relevant fields may be convened to review the available evidence**. The FDA shall then issue its certification based on the recommendations of the ERG.

opposition to the approval of certain contraceptive drugs and devices. In fact, the said provision mandates that the FDA utilize the "best evidence available" to ensure that no abortifacient is approved as a family planning drug or device. It bears mentioning that the same provision even allows an independent evidence review group (ERG) to ensure that evidence for or against the certification of a contraceptive drug or device is duly considered.

Structure of the FDA

As earlier mentioned, the respondents argue that the Decision "wreaked havoc on the organizational structure of the FDA, whose myriad of functions have been carefully delineated under R.A. No. 9711 IRR."[36] Citing Section 7.04, Rule 7 of the RH-IRR, the FDA insists that the function it exercises in certifying family planning supplies is in the exercise of its **regulatory power,** which cannot be the subject of judicial review, and that it is the **Director-General of the FDA** who exercises **quasi-judicial powers**, citing Section 2(b) of Article 3, Book I of the RH-IRR.[37]

The FDA wants the Court to consider that, as a body, it has a distinct and separate personality from the Director-General, who exercises quasi-judicial power. The Court cannot accommodate the position of the respondents. Section 6(a) of R.A. No. 3720, as amended by Section 7 of R.A. No. 9711,[38] provides that "(a) **The FDA shall be headed by a director-general** with the rank of undersecretary, xxx." *How can the head be separated from the body?*

For the record, Section 4 of R.A. No. 3720, as amended by Section 5 of R.A. No. 9711, also recognizes compliance with the requirements of due process, although the proceedings are not adversarial. Thus:

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[36] Omnibus Motion, p. 37.

[37] *Id*. at 10.

[38] Dated August 18, 2009.

Section 5. Section 4 of Republic Act No. 3720, as amended, is hereby further amended to read as follows:

"SEC. 4. To carry out the provisions of this Act, there is hereby created an office to be called the Food and Drug Administration (FDA) in the Department of Health (DOH). Said Administration shall be under the Office of the Secretary and shall have the following functions, powers and duties:

"(a) To administer the effective implementation of this Act and of the rules and regulations issued pursuant to the same;

"(b) To assume primary jurisdiction in the collection of samples of health products;

"(c) To analyze and inspect health products in connection with the implementation of this Act;

"(d) To establish analytical data to serve as basis for the preparation of health products standards, and to recommend standards of identity, purity, safety, efficacy, quality and fill of container;

"(e) To issue certificates of compliance with technical requirements to serve as basis for the issuance of appropriate authorization and spot-check for compliance with regulations regarding operation of manufacturers, importers, exporters, distributors, wholesalers, drug outlets, and other establishments and facilities of health products, as determined by the FDA;

"x x x x x x x x x

"(h) To conduct appropriate tests on all applicable health products prior to the issuance of appropriate authorizations to ensure safety, efficacy, purity, and quality;

"(i) To require all manufacturers, traders, distributors, importers, exporters, wholesalers, retailers, consumers, and non-consumer users of health products to report to the FDA any incident that reasonably indicates that said product has caused or contributed to the death, serious illness or serious injury to a consumer, a patient, or any person;

"(j) To issue cease and desist orders *motu propio* or upon verified complaint for health products, whether or not registered with the FDA *Provided*, That for registered health products, the cease

and desist order is valid for thirty (30) days and may be extended for sixty (60) days only **after due process** has been observed;

"(k) **After due process**, to order the ban, recall, and/or withdrawal of any health product found to have caused the death, serious illness or serious injury to a consumer or patient, or is found to be imminently injurious, unsafe, dangerous, or grossly deceptive, and to require all concerned to implement the risk management plan which is a requirement for the issuance of the appropriate authorization;

"(l) To strengthen the post market surveillance system in monitoring health products as defined in this Act and incidents of adverse events involving such products;

"(m) To develop and issue standards and appropriate authorizations that would cover establishments, facilities and health products;

"(n) To conduct, supervise, monitor and audit research studies on health and safety issues of health products undertaken by entities duly approved by the FDA;

"(o) To prescribe standards, guidelines, and regulations with respect to information, advertisements and other marketing instruments and promotion, sponsorship, and other marketing activities about the health products as covered in this Act;

"(p) To maintain bonded warehouses and/or establish the same, whenever necessary or appropriate, as determined by the director-general for confiscated goods in strategic areas of the country especially at major ports of entry; and

"(q) To exercise such other powers and perform such other functions as may be necessary to carry out its duties and responsibilities under this Act. [Emphases supplied]

The Cardinal Rights of Parties in Administrative Proceedings as laid down in Ang Tibay v. CIR

In *Ang Tibay v. CIR*,[39] the Court laid down the cardinal rights of parties in administrative proceedings, as follows:

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[39] 69 Phil. 635, 642-644 (1940).

1) The right to a hearing, which includes the right to present one's case and submit evidence in support thereof;

2) The tribunal must consider the evidence presented;

3) The decision must have something to support itself;

4) The evidence must be substantial;

5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected;

6) The tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy and not simply accept the views of a subordinate in arriving at a decision; and

7) The board or body should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered.[40]

In the Decision, the Court found that the FDA certified, procured and administered contraceptive drugs and devices, without the observance of the basic tenets of due process, that is, without notice and without public hearing. It appeared that, other than the notice inviting stakeholders to apply for certification/recertification of their reproductive health products, there was no showing that the respondents considered the opposition of the petitioners. Thus, the Court wrote:

Rather than provide concrete evidence to meet the petitioners' opposition, the respondents simply relied on their challenge questioning the propriety of the subject petition on technical and procedural grounds. The Court notes that even the letters submitted by the petitioners to the FDA and the DOH seeking information on the actions taken by the agencies regarding their opposition were left unanswered as if they did not exist at all. The mere fact that the RH Law was declared as not unconstitutional does not permit the respondents to run roughshod over the constitutional rights, substantive and procedural, of the petitioners.

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[40] As cited and paraphrased in *Solid Homes v. Laserna*, 574 Phil. 69, 83 (2008).

Indeed, although the law tasks the FDA as the primary agency to determine whether a contraceptive drug or certain device has no abortifacient effects, its findings and conclusion should be allowed to be questioned and those who oppose the same must be given a genuine opportunity to be heard in their stance. After all, under Section 4(k) of R.A. No. 3720, as amended by R.A. No. 9711, the FDA is mandated to order the ban, recall and/or withdrawal of any health product found to have caused death, serious illness or serious injury to a consumer or patient, or found to be imminently injurious, unsafe, dangerous, or grossly deceptive, after due process.

Due to the failure of the respondents to observe and comply with the basic requirements of due process, the Court is of the view that the certifications/re-certifications and the distribution of the questioned contraceptive drugs by the respondents should be struck down as violative of the constitutional right to due process.

Verily, it is a cardinal precept that where there is a violation of basic constitutional rights, the courts are ousted from their jurisdiction. The violation of a party's right to due process raises a serious jurisdictional issue which cannot be glossed over or disregarded at will. Where the denial of the fundamental right to due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction. This rule is equally true in quasi-judicial and administrative proceedings, for the constitutional guarantee that no man shall be deprived of life, liberty, or property without due process is unqualified by the type of proceedings (whether judicial or administrative) where he stands to lose the same.[41]

The Court stands by that finding and, accordingly, reiterates its order of remand of the case to the FDA.

Procedure in the FDA; No Trial-Type Hearing

The Court is of the view that the FDA need not conduct a trial-type hearing. Indeed, due process does not require the conduct of a trial-type hearing to satisfy its requirements. All that the Constitution requires is that the FDA afford the people their right to due process of law and decide on the applications

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[41] *Rollo,* pp. 396-397.

submitted by MAHs after affording the oppositors like the petitioners a genuine opportunity to present their science-based evidence. As earlier pointed out, this the FDA failed to do. It simply ignored the opposition of the petitioners. In the case of *Perez, et al. v. Philippine Telegraph and Telephone Company, et al.,*[42] it was stated that:

> A formal trial-type hearing is not even essential to due process. It is enough that the parties are given a fair and reasonable opportunity to explain their respective sides of the controversy and to present supporting evidence on which a fair decision can be based.

In the fairly recent case of *Vivo v. Pagcor*,[43] the Court explained:

> The observance of fairness in the conduct of any investigation is at the very heart of procedural due process. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. **Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary**, and technical rules of procedure are not strictly applied. *Ledesma v. Court of Appeals* elaborates on the well-established meaning of due process in administrative proceedings in this wise:
>
> > x x x Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. [Emphasis supplied; citations omitted]

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[42] 602 Phil. 522, 540 (2009).

[43] 721 Phil. 34, 39-40 (2013).

Best Evidence Available

Section 5, Rule 133 of the Rules of Court provides:

> Section 5. In all cases filed before **administrative** or **quasi-judicial bodies**, a fact may be deemed established if it is supported by **substantial evidence**, or the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

As applied to certification proceedings at the FDA, "substantial evidence" refers to the **best scientific evidence available**,[44] "including but not limited to: meta analyses, systematic reviews, national clinical practice guidelines where available, and recommendations of international medical organizations," needed to support a conclusion whether a contraceptive drug or device is an abortifacient or not. The FDA need not be bound or limited by the evidence adduced by the parties, but it can conduct its own search for related scientific data. It can also consult other technical scientific experts known in their fields. It is also not bound by the principle of *stare decisis* or *res judicata*, but may update itself and cancel certifications *motu proprio* when new contrary scientific findings become available or there arise manifest risks which have not been earlier predicted.

On the Competence of the Court to review the Findings of the FDA

The fact that any appeal to the courts will involve scientific matters will neither place the actions of the respondents beyond the need to comply with the requirements of *Ang Tibay* nor place the actions of the FDA in certification proceedings beyond judicial review.

It should be pointed out that nowhere in Batas Pambansa Blg. 129, as amended, are the courts ousted of their jurisdiction whenever the issues involve questions of scientific nature. A court is not considered incompetent either in reviewing the findings of the FDA simply because it will be weighing the

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[44] *See* Section 7.04 (c) Rule 7 of the Implementing Rules and Regulations of R.A. No. 10354.

scientific evidence presented by both the FDA and its oppositors in determining whether the contraceptive drug or device has complied with the requirements of the law.

Although the FDA is not strictly bound by the technical rules on evidence, as stated in the Rules of Court, or it cannot be bound by the principle of *stare decisis* or *res judicata*, it is not excused from complying with the requirements of due process. To reiterate for emphasis, due process does not require that the FDA conduct trial-type hearing to satisfy its requirements. All that the Constitution requires is that the FDA afford the people their right to due process of law and decide on the applications submitted by the MAHs after affording the oppositors, like the petitioners, a genuine opportunity to present their science-based evidence.

The Appellate Procedure;
Appeal to the Office of the President

Incidentally, Section 32 of R.A. No. 3720 and Section 9 of Executive Order *(E.O.)* No. 247 provide that any decision by the FDA would then be appealable to the Secretary of Health, whose decision, in turn, may be appealed to the Office of the President *(OP)*. Thus:

> Sec. 32. **The orders, rulings or decisions of the FDA shall be appealable to the Secretary of Health**. — An appeal shall be deemed perfected upon filing of the notice of appeal and posting of the corresponding appeal bond.
>
> An appeal shall not stay the decision appealed from unless an order from the Secretary of Health is issued to stay the execution thereof.
>
> Sec. 9. Appeals. — **Decisions of the Secretary** (DENR, DA, **DOH** or DOST) **may be appealed to the Office of the President**. Recourse to the courts shall be allowed after exhaustion of all administrative remedies.

In view thereof, the Court should modify that part of the Decision which allows direct appeal of the FDA decision to the Court of Appeals. As stated in the said decision, the FDA decision need not be appealed to the Secretary of Health because

she herself is a party herein. Considering that the Executive Secretary is not a party herein, the appeal should be to the OP as provided in Section 9.

On the Prayer to Lift the TRO

The respondents lament that the assailed decision undermines the functions of the FDA as the specialized agency tasked to determine whether a contraceptive drug or device is safe, effective and non-abortifacient. They also claim that the assailed decision requiring notice and hearing would unduly delay the issuance of CPR thereby affecting public access to State-funded contraceptives. Finally, in a veritable attempt to sow panic, the respondents claim that the TRO issued by the Court would result in "a nationwide stockout of family planning supplies in accredited public health facilities *and* the commercial market."[45]

On this score, it should be clarified that the Decision simply enjoined the respondents from registering, recertifying, procuring, and administering only those contraceptive drugs and devices which were the subjects of the petitioners' opposition, specifically Implanon and Implanon NXT. It never meant to enjoin the processing of the entire gamut of family planning supplies that have been declared as unquestionably non-abortifacient. Moreover, the injunction issued by the Court was only subject to the condition that the respondents afford the petitioners a genuine opportunity to their right to due process.

As the Decision explained, the Court cannot lift the TRO prior to the summary hearing to be conducted by the FDA. To do so would render the summary hearing an exercise in futility. Specifically, the respondents would want the Court to consider their argument that Implanon and Implanon NXT have no abortifacient effects. According to them, "the FDA tested these devices for safety, efficacy, purity, quality, and non-abortiveness prior to the issuance of certificates of registration and recertification, and after the promulgation of Imbong."[46] **The**

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[45] *Rollo*, pp. 442-446.

[46] Omnibus Motion, pp. 40-41.

Court, however, cannot make such determination or pronouncement at this time. To grant its prayer to lift the TRO would be **premature** and **presumptuous**. Any declaration by the Court at this time would have **no basis** because the FDA, which has the mandate and expertise on the matter, has to first resolve the controversy pending before its office.

This Court also explained in the Decision that the issuance of the TRO did not mean that the FDA should stop fulfilling its mandate to test, analyze, scrutinize, and inspect other drugs and devices. Thus:

> Nothing in this resolution, however, should be construed as restraining or stopping the FDA from carrying on its mandate and duty to test, analyze, scrutinize, and inspect drugs and devices. What are being enjoined are the grant of certifications/re-certifications of contraceptive drugs without affording the petitioners due process, and the distribution and administration of the questioned contraceptive drugs and devices including Implanon and Implanon NXT until they are determined to be safe and non-abortifacient.[47]

On Delay

The respondents claim that this judicial review of the administrative decision of the FDA in certifying and recertifying drugs has caused much delay in the distribution of the subject drugs with a dire impact on the effective implementation of the RH Law.

In this regard, the respondents have only themselves to blame. Instead of complying with the orders of the Court as stated in the Decision to conduct a summary hearing, the respondents have returned to this Court, asking the Court to reconsider the said decision claiming that it has wreaked havoc on the organizational structure of the FDA.

Had the FDA immediately conducted a summary hearing, by this time it would have finished it and resolved the opposition

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[47] *Alliance for the Family Foundation, Philippines, Inc. v. Garin*, G.R. Nos. 217872 & 221866, August 24, 2016.

of the petitioners. Note that there was already a finding by the FDA, which was its basis in registering, certifying and recertifying the questioned drugs and devices. The pharmaceutical companies or the MAHs need not present the same evidence it earlier adduced to convince the FDA unless they want to present additional evidence to fortify their positions. The only entities that would present evidence would be the petitioners to make their point by proving with relevant scientific evidence that the contraceptives have abortifacient effects. Thereafter, the FDA can resolve the controversy.

Indeed, in addition to guaranteeing that no person shall be deprived of life, liberty and property without due process of law,[48] the Constitution commands that "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies."[49]

WHEREFORE, the August 24, 2016 Decision is **MODIFIED**. Accordingly, the Food and Drug Administration is ordered to consider the oppositions filed by the petitioners with respect to the listed drugs, including Implanon and Implanon NXT, based on the standards of the Reproductive Health Law, as construed in *Imbong v. Ochoa*, and to decide the case within sixty (60) days from the date it will be deemed submitted for resolution.

After compliance with due process and upon promulgation of the decision of the Food and Drug Administration, the Temporary Restraining Order would be deemed lifted if the questioned drugs and devices are found not abortifacients.

After the final resolution by the Food and Drug Administration, any appeal should be to the Office of the President pursuant to Section 9 of E.O. No. 247.

As ordered in the August 24, 2016 Decision, the Food and Drug Administration is directed to amend the Implementing

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[48] CONSTITUTION, (1987), Art. III, Sec. 1.

[49] CONSTITUTION, (1987), Art. III, Sec. 16.

Rules and Regulations of R.A. No. 10354 so that it would be strictly compliant with the mandates of the Court in *Imbong v. Ochoa*.

SO ORDERED.

Carpio (*Chairperson*), *del Castillo,* and *Martires, JJ.,* concur.

Leonen, J., concurs in a separate opinion.

CONCURRING OPINION

LEONEN, *J.*:

I concur that petitioners' comment should have been addressed by respondent in the re-certification proceedings. The submission of comments by the public is required by respondents' own procedures, which it violated by refusing to answer or even acknowledge the oppositions submitted.

Nevertheless, a certification and re-certification proceeding for the determination of non-abortifacience does not require a public hearing. The Food and Drug Administration, as a regulatory agency, does not exercise its quasi-judicial functions when it determines whether a contraceptive is safe, effective, and a non-abortifacient. In certification and re-certification proceedings, the Food and Drug Administration merely looks at the requirements of the law and applies it. Its scientific testing and gathering of medical and pharmacological data do not require an adjudication of rights of the parties before it. Public participation, however, is still necessary for purposes of transparency since any public act is subject to public scrutiny and criticism.

I

The Food and Drug Administration was created by Republic Act No. 3720[1] to regulate food, drug, and cosmetic manufacturers and establishments.[2] In 1982, the Food and Drug Administration

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[1] Food, Drug, and Cosmetic Act (1963).

[2] *See* Rep. Act No. 3720, Chapt. III, Sec. 4.

was abolished and its functions were assumed by the Bureau of Food and Drugs.[3] In 2009, the Bureau of Food and Drugs was renamed the Food and Drug Administration.[4] Republic Act No. 9711 outlined the Food and Drug Administration's regulatory capabilities, including the development and issuance of "standards and appropriate authorizations that would cover establishments, facilities and health products."[5]

Among the authorizations issued by the Food and Drug Administration is the Certificate of Product Registration[6] of all health products or "food, drugs, cosmetics, devices, biologicals, vaccines, in-vitro diagnostic reagents and household/urban hazardous substances and/or a combination of and/or a derivative thereof,"[7] consistent with its mandate to "insure safe and good quality [supplies] of food, drug[s] and cosmetic[s]."[8]

Considering the highly technical nature of the registration and certification process, the Food and Drug Administration is further subdivided into four (4) research centers: first, the Center for Drug Regulation and Research; second, the Center for Food Regulation and Research; third, the Center for Cosmetic Regulation and Research; and fourth, the Center for Device Regulation, Radiation Health and Research.[9]

Prior to the issuance of a Certificate of Product Registration of an established drug,[10] the Center for Drug Regulation and

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[3] *See* Exec. Order No. 851 (1982), Sec. 4.

[4] *See* Rep. Act No. 9711, Sec. 1.

[5] *See* Rep. Act No. 9711, Sec. 5(m).

[6] *See* Implementing Rules and Regulations of Rep. Act No. 9711, Book II, Art. I, Sec. 3(B).

[7] *See* Implementing Rules and Regulations of Rep. Act No. 9711, Book I, Art. I, Sec. 5.

[8] *See* Rep. Act No. 3720, Chapt. II, Sec. 2.

[9] *See* Implementing Rules and Regulations of Rep. Act No. 9711, Book I, Art. VII, Sec. 1 (a) to (d).

[10] Defined in Adm. Order No. 67 (1989), Sec. 3, 3.2.4 as "a drug the safety and efficacy of which has been demonstrated through long years of

Research must first review the technical specifications of the drug, in particular:

1. Application Letter
2. Valid License to Operate of manufacturer/trader/ distributor/ importer/exporter/wholesaler
3. Certificate of Brand Name Clearance
4. Agreement between Manufacturer and Trader or Distributor-Importer/Exporter
5. General Information – product's proprietary or brand name, official chemical name(s) and generic name(s) of active ingredient(s), molecular or chemical formula and structure, amount of active ingredient per unit dose, pharmaceutical form of the drug, indication, recommended dosage, frequency of administration, route and mode of administration, contraindication, warnings and precautions
6. Unit dose and batch formulation

- Must be in full compliance with the latest official monograph (United States Pharmacopeia, British Pharmacopeia, Japanese Pharmacopeia, European Pharmacopeia, International Pharmacopeia); name and edition of the reference may be cited in lieu of submitting a detailed list of limits and tests; when an alternative procedure or limit is used, it shall be equal to or more stringent than the official requirement
- For non-official or unofficial substances, separate list of technical specifications of each ingredient must include the ff:
    - o Name of substance
    - o detailed information on physical and chemical properties
    - o ID tests
    - o Purity tests
    - o Assay

7. Technical/Quality Specifications of all Raw Materials including Packaging Materials
8. Certificate of Analysis of Active Ingredient(s)
9. Technical Specifications of the Finished Product

    a) The appearance of the product (colour, shape dimensions, odour, distinguishing features, etc.)

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general use and can be found in current official USP-NF, and other internationally-recognized pharmacopoeia."

b) Identification of the active ingredient(s) (must include the specific identity test for the active moiety)
c) Quantitative determination of active ingredient(s) (i.e. Assay)
d) Test of impurities
e) The appropriate tests concerning the pharmaceutical properties of the dosage form (e.g. pH, content uniformity, dissolution rate, disintegration, etc)
f) Tests for safety, sterility, pyrogens, histamine, abnormal toxicity, etc. where applicable.
g) Technical properties of containers
h) For drug preparations which are subject of an official monograph, the technical/quality specifications of the finished product as stated in the monograph shall be complied with.

10. Certificate of Analysis of the Finished Product
11. Pull description of the methods used, the facilities and controls in the manufacture, processing and packaging of the finished product.
12. Details of the assay and other test procedures of finished product including data analysis
13. Detailed report of stability studies to justify claimed shelf-life
14. Labeling materials
15. Representative sample
16. For imported products: Duly authenticated Certificate of Free Sale from the country of origin, and Duly authenticated government certificate attesting to the registration status of the manufacturer.[11]

New drugs,[12] on the other hand, require a longer review process before the issuance of a Certificate of Product Registration.

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[11] Omnibus Motion, pp. 18-19 citing Adm. Order No. 67, (1989) and Bureau Circ. No. 5 (1997).

[12] Defined in Adm. Order No. 67 (1989), Sec. 3, 3.2.2 as "a new chemical or structural modification of a Tried and Tested or Established Drug proposed to be used for a specific therapeutic indication, which has undergone adequate clinical pharmacology Phase I, II and III studies but which needs further Phase IV Clinical Pharmacology studies before it can be given regular registration."

The Center for Drug Regulation and Research must first review the following requirements and conduct a series of scientific tests before the issuance of a certification:

1. All requirements for Established Drugs as stated above
2. Certificate of the Medical Director
3. Reference Standard and its corresponding Certificate of Analysis
4. Pre-clinical Data

Before initial human studies are permitted, the full spectrum of pharmacologic properties of the new drug must be extensively investigated in animals. Animal researches are done to provide evidence that the drug has sufficient efficacy and safety to warrant testing in man.

a) Pharmacodynamics
- to identify the primary action of the drug as distinguished from the description of its resultant effects.
- to delineate the details of the chemical interaction between drug and cell or specific receptor site(s), and
- to characterize the full sequence of drug action and effects.

i. Pharmacologic effects - properties relevant to the proposed indication and other effects. Pharmacodynamic data shall demonstrate the primary pharmacologic effect of the drug leading to its development for the intended use(s) or indication(s). It shall also show the particular tissue (s)/ organ(s) affected by the drug and any other effect it produces on the various systems of the body.

ii. Mechanism of action including structure-activity relationship (SAR)

b) Pharmacokinetics

Pharmacokinetic data form the basis for prediction of therapeutic doses and suitable dosage regimen.

These data shall demonstrate the following:

i. the rate and extent of absorption of the drug using the intended route of administration;
ii. the distribution pattern including a determination of the tissues or organs where the drug and its metabolites are concentrated immediately after administration and the time course of their loss

from this [sic] sites;
iii. the metabolic pathway of the drug or its biotransformation and the biological metabolites;
iv. the route of excretion of the drug and its principal metabolites and the amount of unchanged substance and metabolites for each route of excretion;
v. the drug's half-life or the rate that it is eliminated from the blood, plasma or serum.

c) Toxicity data

i. Acute Toxicity

Acute toxicity data shall show the median lethal dose of a drug.

Ideally, the study shall be carried out in at least two (2) species of animals, one (1) rodent and the other non-rodent, using 5 dose levels with the appropriate number of test animals.

ii. Subchronic Toxicity

Subchronic toxicity studies are carried out using repeated daily exposure to the drug over a period of 21-90 days with the purpose of studying the toxic effects on target organs, the reversibility of the effects and the relationship of blood and tissue levels on the test animals

iii. Chronic Toxicity

Chronic toxicity studies constitute important steps in the analysis of a chemical. The entire lifetime exposure of an individual or animal to the environment or chemical is an on-going process which neither acute nor subchronic toxicity study can provide. The effect on animals when small doses of the drug are given over a long period of time may not be the same as when large doses are given over a short period.

iv. Special Toxicity Studies
v. [sic]

a. Reproduction Tests

1. Multigeneration reproduction study provides information on the fertility and pregnancy in parent animals and subsequent generations. The effects of a potentially toxic substance could be determined by the reproductive performance through successive generations such as adverse effects on the formation of gametes

and on fertilization and to detect gross genetic mutations which may lead to fetal death, fetal abnormalities or inadequate development or abnormal reproductive capacity in the F1 generation. This study can also reveal adverse drug effects that occur during pregnancy or during lactation.

2. Teratologic study determines the effect of a chemical on the embryonic and fetal viability and development when administered to the pregnant female rodent (rat) or nonrodent (beagle dog or monkey) during the period of organogenesis.

3. Peri-natal and post-natal study determines the effects of drugs or chemical given to the pregnant animal in the final one-third of gestation and continued throughout lactation to weaning of pups.

b. Carcinogenicity

Carcinogenicity tests in animals are required when the drug is likely to be given to humans continuously or in frequent short course periods to determine whether chronic administration can cause tumors in animals. Mice and rats are the rodents of choice while dogs or monkeys are preferred non-rodents. These tests may be designed to be incorporated in the protocol for chronic toxicity studies wherein the animals are exposed to the drug after weaning and continued for a minimum of two years. At least 3 dose levels are used with the highest dose approximating the maximal tolerated dose and the route should be similar to that anticipated in man. Repeated expert observation, palpation and thorough examinations of animals for any lumps or masses are essential. All animals must be thoroughly autopsied and histological examination of all organs should be carried out.

c. Mutagenicity

Mutagenicity tests have the primary objective of determining whether a chemical has the potential to cause genetic damage in humans. Animal model systems, both mammalian and non-mammalian together with microbial systems which may approximate human susceptibility, are used in these tests.

5. Clinical Data

a) Certification of an independent institution review board of approval of clinical protocol and monitoring of clinical trial

b) Clinical Investigation Data

i. Phase I Clinical Drug Trial

Phase I Clinical Drug Trial consists of initial testing of the study drug in humans, usually in normal volunteers but occasionally in actual patients. The number of subjects is small (N= 15 to 3). Safety evaluations are the primary objectives and attempt is made to establish the approximate levels of patient tolerance for acute and multiple dosing. Basic data on rates of absorption, degree of toxicity to organs (heart, kidney, liver, hematopoietic, muscular, nervous, vascular) and other tissue, metabolism data, drug concentrations in serum or blood and excretion patterns are also obtained. Subjects shall be carefully screened. Careful monitoring for adverse or untoward effects and intensive clinical laboratory tests are required. This study shall be conducted by an approved or accredited Clinical Pharmacologist. A written informed consent of subject is necessary.

ii. Phase II Clinical Drug Trial

Phase I Clinical Drug Trials are initial studies designed to evaluate efficacy of the study drug in a small number of selected populations or patient for whom the drug is intended which may be open label or single or double blind. Blood levels at various intervals, adverse experiences, and additional Phase I data may be obtained. Small doses are gradually increased until the minimal effective dose is found. All reactions of the subjects are carefully recorded. Preliminary estimates of the dosage, efficacy and safety in man are made. The second part of Phase II consists of pivotal well controlled studied that usually represent the most rigorous demonstrations of a drug efficacy. Relative safety information is also determined in Phase II studies. A larger number of patients are enrolled into the second part (N= 60 to 200 subjects). Phase II studies are conducted by accredited Clinical Pharmacologists. Phase II second part studies may be conducted by well qualified practitioners or clinicians who are familiar with the conditions to be treated, the drug used in these conditions to be treated, the drug used in these conditions and the methods of their evaluation. A written informed consent of patients-participants is needed.

iii. Phase III Clinical Drug Trial

Phase III clinical drug trials are studies conducted in patient populations for which the drug is eventually intended. These studies generate data on both safety and efficacy in relatively large numbers

of patients under normal use conditions in both controlled and uncontrolled studies. The number of patients required vary [sic] (1,000 to 10,000). These studies provide much of the information that is needed for the package insert and labelling of the drug. This phase may be conducted as a multicentric trial among accredited clinicians. The informed consent of participating subject is preferably in written form.

iv. Biovailability

Bioavailability studies are conducted to determine the rate and extent to which the active substance or therapeutic moiety is absorbed from a pharmaceutical form and becomes available at the site of action.

c) Name of investigator(s) and curriculum vitae
d) Name(s) of center/institution wherein the clinical investigation was undertaken
e) Protocol for local clinical trial[13]

Under Republic Act No. 10354,[14] the Food and Drug Administration is likewise given the authority to determine whether a drug or device is considered an abortifacient.[15] In order for a contraceptive to be considered medically safe and non-abortifacient, it must have been registered and approved by the Food and Drug Administration in accordance with its "scientific and evidence-based medical research standards."[16] In addition to the regular registration and certification process required for established drugs and new drugs, Market

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[13] Omnibus Motion, pp. 20-24 citing Adm.Order No. 67 (1989) and Bureau Circ. No. 5 (1997).

[14] The Responsible Parenthood and Reproductive Health Act of 2012.

[15] *See* Rep. Act No. 10354, Sec. 4(a) which provides:

Section 4. Definition of Terms – For purposes of this Act, the following shall be defined as follows:
(a) *Abortifacient* refers to any drug or device that induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon determination of the FDA.

[16] *See* Rep. Act No. 10354, Sec. 3(e).

Authorization Holders (MAHs) must also undergo a process to determine if their contraceptive is safe and non-abortifacient.

Before the effectivity of Republic Act No. 10354, the Center for Drug Regulation and Research followed this procedure for the registration of contraceptives:

> Step 1. The FDA receives applications of MAH [Market Authorization Holder] through its Public Assistance, Information and Receiving (PAIR) Unit.
>
> Step 2. The FDA evaluates whether the MAH submitted complete documents for review.
>
> Step 3. The FDA schedules and decks the application for registration to the evaluator.
>
> Step 4. The Junior Evaluator of the CDRR Registration Section, Human Drugs-Chemistry Manufacturing and Controls Unit evaluates the contraceptive product for quality. The Junior Evaluator of the CDRR Registration Section, Human Drugs-Clinical Research Unit and FDA medical consultants evaluate the contraceptive product for safety and efficacy, as applicable.
>
> Step 5. The Senior Evaluator of the CDRR Registration Section, Human Drugs-Chemistry Manufacturing and Controls Unit and Senior Evaluator of the Clinical Research Unit checks [sic] the findings of the Junior Evaluators.
>
> Step 6. The FDA Consultants and the Evaluators meet for final assessment and recommendation.
>
> Step 7. Issuance of CPR/Notice of Deficiencies/Letter of Denial.
>
> Step 8. The FDA uploads a copy of the CPR at the FDA Inventory System. The FDA also uploads the product details such as registration number, generic name, brand name, dosage strength and form, the NIAH, and CPR Validity at the FDA website.
>
> Step 9. Release of the CPR or letter through PAIR Unit.[17]

Republic Act No. 10354, however, explicitly outlines the steps the Food and Drug Administration must undertake in order

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[17] Omnibus Motion, pp. 12-13.

to identify if a particular contraceptive or intrauterine device is non-abortifacient:

Section 7.04 FDA Certification of Family Planning Supplies. – The FDA must certify that a family planning drug or device is not an abortifacient in dosages of its approved indication (for drugs) or intended use (for devices) prior to its inclusion in the EDL. The FDA shall observe the following guidelines in the determination of whether or not a drug or device is an abortifacient:

a) As defined in Section 3.01 (a) of these Rules, a drug or device is deemed to be an abortifacient if it is proven to primarily induce abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb;

b) The following mechanisms do not constitute abortion: the prevention of ovulation; the direct action on sperm cells prior to fertilization; the thickening of cervical mucus; and any mechanism acting exclusively prior to the fertilization of the egg by the sperm;

c) In making its determination, the FDA shall use the best evidence available, including but not limited to: meta-analyses, systematic reviews, national clinical practice guidelines where available, and recommendations of international medical organizations;

d) In the presence of conflicting evidence, the more recent, better-designed, and larger studies shall be preferred, and the conclusions found therein shall be used to determine whether or not a drug or device is an abortifacient; and

e) Should the FDA require additional expertise in making its determination, an independent evidence review group (ERG) composed of leading experts in the fields of pharmacodynamics, medical research, evidence-based medicine, and other relevant fields may be convened to review the available evidence. The FDA shall then issue its certification based on the recommendations of the ERG.[18]

Upon the effectivity of the Implementing Rules and Regulations of Republic Act No. 10354, all "health care drugs, supplies, and products" with prior Certificates of Product

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[18] Implementing Rules and Regulations of Rep. Act No. 10354, Sec. 7.04.

Registration must undergo a re-certification process with the Food and Drug Administration to prove that they are safe and non-abortifacient.[19]

In order to aid the re-certification process of Marketing Authorization Holders of contraceptive drugs, the Center for Drug Regulation and Research formulated the steps to be undertaken:

Step 1. Identify contraceptive products in the database. Create another database containing the following details of contraceptive products: generic name, dosage strength and form, brand name (if any), registration number, manufacturer, MAH, and the period of validity of the CPR.

Step 2. Identify contraceptive products which are classified as essential medicines in the Philippine Drug Formulary.

Step 3. Retrieve the contraceptive product's file and the CPR duplicate of all registered contraceptive products. Create a database of the contraceptive product's history, including its initial, renewal, amendment, and/ or variation applications.

Step 4. Conduct a preliminary review of the following:

a. general physiology of female reproductive system, including hormones involved, female reproductive cycle, and conditions of the female reproductive system during pregnancy.

b. classification of hormonal contraceptives;

c. regulatory status of the products in benchmark countries; and

d. mechanism of action of hormonal contraceptives based on reputable journals, meta-analyses, systemic reviews, evaluation of regulatory authorities in other countries, textbooks, among others.

Step 5. Issue a notice to all concerned MAHs, requiring them to submit scientific evidence that their product is non-abortifacient, as defined in the RH Law and *Imbong*.

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[19] Implementing Rules and Regulations of Rep. Act No. 10354, Sec. 7.05.

Step 6. Post a list of contraceptive products which were applied for re-certification for public comments in the FDA website.

Step 7. Evaluate contraceptive products for re-certification.

A. Part I (Review of Chemistry, Manufacture and Controls)

1. Unit Dose and Finished Product Formulation

2. Technical Finished Product Specifications

3. Certificate of Analysis

B. Part II (Evaluation of Whether the Contraceptive Product is Abortifacient)

1. Evaluation of the scientific evidence submitted by the applicant and the public.

2. Review and evaluation of extraneous evidence, e.g., scientific journals, meta-analyses, etc.

Step 8. Assess and review the documentary requirements submitted by the applicant. Technical reviewers considered scientific evidence such as meta-analyses, systemic reviews, national and clinical practice guidelines and recommendations of international medical organizations submitted by the companies, organizations and individuals to be part of the review.[20]

In a certification proceeding for contraceptives, contraceptives must undergo both the scientific testing necessary for all drugs to test for its safety and efficacy. In addition, contraceptives must likewise be tested for non-abortifacience. Best evidence of non-abortifacience include "meta-analyses, systematic reviews, national clinical practice guidelines where available, and recommendations of international medical organizations."[21] In case of conflict, "more recent, better-designed, and larger studies shall be preferred."[22] The Food and Drug Administration

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[20] OSG Omnibus Motion, pp. 13-14, *rollo*, pp. 418-419.

[21] Implementing Rules and Regulations of Rep. Act No. 10354, Sec. 7.04.

[22] Implementing Rules and Regulations of Rep. Act No. 10354, Sec. 7.04.

is also authorized to constitute "an independent evidence review group (ERG) composed of leading experts in the fields of pharmacodynamics, medical research, evidence-based medicine, and other relevant fields."[23]

Re-certification proceedings, on the other hand, involve a preliminary review of the physiology of the female reproductive system and the classification, regulatory status, and mechanism of hormonal contraceptives in other countries, as well as a two-part evaluation process.[24] The first part is a review of the chemistry, manufacture, and control of the product while the second part evaluates all the scientific data submitted.[25]

The present controversy revolves around whether the Food and Drug Administration's authority to determine whether a contraceptive is non-abortifacient is quasi-judicial in nature, and therefore must adhere to the due process standards required of administrative proceedings.

Considering the Food and Drug Administration's heavy reliance on scientific data and the highly technical nature of the certification and non-certification process, the proceeding is not quasi-judicial in nature.

II

An administrative agency performs a quasi-judicial function when it has "the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law."[26] Its quasi-judicial

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[23] Implementing Rules and Regulations of Rep. Act No. 10354, Sec. 7.04.

[24] OSG Omnibus Motion, pp. 13-14, *rollo*, pp. 418-419.

[25] OSG Omnibus Motion, pp. 13-14, *rollo*, pp. 418-419.

[26] *Smart Communications v. National Telecommunications Commission*, 456 Phil. 145, 156 (2003) [Per J. Ynares-Santiago, First Division] citing the Separate Opinion of J. Bellosillo, in *Commissioner of Internal Revenue v. Court of Appeals*, 329 Phil. 987, 1017 (1996) [Per J. Kapunan, First Division].

functions require the agency to "investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature."[27] Otherwise stated, an agency performs a quasi-judicial function when it determines what the law is and adjudicates the rights of the parties before it.[28]

An administrative agency's quasi-judicial functions should not be confused with its administrative or executive functions. A purely executive or administrative function

> connotes, or pertains, to "administration, especially management, as by managing or conducting, directing or superintending, the execution, application, or conduct of persons or things." It does not entail an opportunity to be heard, the production and weighing of evidence, and a decision or resolution thereon.[29]

On the other hand, an administrative agency exercises its quasi-judicial function when "it performs *in a judicial manner* an act which is essentially of an executive or administrative nature."[30] Thus, while the administrative agency is not expected to act like a court of law, it is still expected to listen to both sides and to render a decision explaining its reasons for its decision.[31]

As previously discussed, the Food and Drug Administration requires scientific, medical, and pharmacological data as well

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[27] *Id*. at 157.

[28] See *Santiago v. Bautista*, 143 Phil. 209 (1970) [Per *J*. Barredo, *En Banc*].

[29] *Villarosa v. Commission on Elections*, 377 Phil. 497, 506 (1999) [Per *J*. Gonzaga-Reyes, *En Banc*] citing the Concurring Opinion of *J*. Antonio in *University of Nueva Carceres v. Martinez*, 155 Phil. 126 (1974) [Per *J*. Barredo, Second Division].

[30] *Smart Communications v. National Telecommunications Commission*, 456 Phil. 145, 157 (2003) [Per *J*. Ynares-Santiago, First Division].

[31] *See* Concurring Opinion of *J*. Brion in *Perez v. Philippine Telegraph and Phone Company*, 602 Phil. 522, 545 (2009) [Per *J*. Corona, *En Banc*].

as numerous clinical studies in its registration, certification, and re-certification procedures. Due to the highly technical nature of the processes, none of the standards and procedures required in quasi-judicial proceedings would be applicable to it.

The standard of evidence required to establish the existence of a fact before a quasi-judicial tribunal is substantial evidence.[32] Substantial evidence is defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[33]

The United States Food and Drug Administration defines substantial evidence of a drug's effectiveness as:

"evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and responsibly be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof."[34]

Republic Act No. 10354 mandates that the Food and Drug Administration use the "best evidence available" to ascertain whether a contraceptive is non-abortifacient:

c) In making its determination, the FDA shall use the best evidence available, including but not limited to: meta-analyses, systematic reviews, national clinical practice guidelines where available, and recommendations of international medical organizations.[35]

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[32] *See* RULES OF COURT, Rule 133, Sec. 5.

[33] RULES OF COURT, Rule 133, Sec. 5.

[34] U.S. Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (CDER), Center for Biologics Evaluation and Research (CBER), *Guidance for Industry Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products* (1998) 6. Available at <https://www.fda.gov/ohrms/dockets/98fr/971OOgdl.pdf> 6. (Last visited: November 22, 2016).

[35] Implementing Rules and Regulations of Rep. Act No. 10354, Sec. 7.04.

It would be absurd to presume that any evidence, which a reasonable mind may accept as adequate, would yield the same kind of evidence as clinical investigations by scientific experts, meta-analyses, systematic reviews, national clinical practice guidelines, and recommendations of international medical organizations. It also requires a review of the physiology of the reproductive system, the classification, regulatory status, and mechanism of hormonal contraceptives in other countries, and a review of all available scientific data in medical journals and textbooks. An independent evidence review group composed of leading experts in the fields of pharmacodynamics, medical research, evidence-based medicine, and other relevant fields may also be constituted to review the available data.[36]

What the law requires is not just a reasonable mind, but also scientific, medical, and pharmacological expertise. The necessary evidence in registration, certification, and re-certification proceedings cannot be equated to that required in a quasi-judicial tribunal.

Quasi-judicial agencies are also required to adjudicate only on the evidence submitted by the parties.[37] In certification and re-certification proceedings, however, the Food and Drug Administration cannot merely rely on the evidence submitted by the Marketing Authorization Holder or of the oppositors. The law requires it to use the "best evidence available."[38] This means that it must consider external and extraneous evidence not necessarily submitted by the applicants or oppositors, such as clinical studies, medical journals and textbooks, and safety guidelines and standards in other countries.

Rulings of quasi-judicial agencies are also appealable to the Court of Appeals under Rule 43 of the Rules of

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[36] Implementing Rules and Regulations of Rep. Act No. 10354, Sec. 7.04.

[37] See *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

[38] Implementing Rules and Regulations of Rep. Act No. 10354, Sec. 7.04.

Court.[39] The Court of Appeals, however, does not have the technical expertise to review or overrule the scientific, medical, and pharmacological data of the Food and Drug Administration. Even the law recognizes the Food and Drug Administration's expertise on the matter:

> (a) Abortifacient refers to any drug or device that induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb *upon determination of the FDA*.[40] (Emphasis supplied)

In *Imbong v. Ochoa*,[41] this Court further recognized that the Food and Drug Administration "has the expertise to determine whether a particular hormonal contraceptive or intrauterine device is safe and non-abortifacient."[42]

The Court of Appeals does not have the required medical and pharmacological background to review the numerous clinical studies performed by scientific, medical, and pharmacological experts, meta-analyses, systemic reviews, medical journals, and textbooks. It is not equipped to conclude matters of a highly technical nature. It cannot adjudicate on conflicting scientific

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[39] RULES OF COURT, Rule 43, Sec. 1 provides:

> Section 1. Scope.— This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No, 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

[40] Rep. Act No. 10354, Sec. 4(a).

[41] 732 Phil. 1 (2014) [Per *J.* Mendoza, *En Banc*].

[42] *Id*. at 161.

studies to conclude which would have more weight. For this reason, the law specifically assigned the procedure to a specialized agency as part of its executive regulatory function.

It is also for this reason that the Implementing Rules and Regulations of Republic Act No. 9711 include the issuance of authorizations, including Certificates of Product Registration, as part of its regulatory functions, and not its quasi-judicial functions:

b. Quasi-Judicial Powers, Duties and Functions:

(1) To render decisions on actions or complaints before the FDA pursuant to the FDA Act of 2009, these Rules and Regulations, other existing laws, and FDA-promulgated issuances;

(2) To hold in direct or indirect contempt any person who disregards orders or writs issued by the FDA and impose the appropriate penalties following the same procedures and penalties provided in the Rules of Court;

(3) To administer oaths and affirmations and issue subpoena duces tecum and subpoena ad testificandum requiring the production of such books, contracts, correspondence, records, statement of accounts and other documents and/or the attendance and testimony of parties and witnesses as may be material to any investigation conducted by the FDA;

(a) To obtain information from any officer or office of the national or local governments, government agencies and its instrumentalities;

(5) To issue orders of seizure, to seize and hold in custody any article or articles of food, device, cosmetics, household hazardous substances and health products that are adulterated, counterfeited, misbranded or unregistered; or any drug, in-vitro diagnostic reagents, biologicals, and vaccine that is adulterated or misbranded, when introduced into domestic commerce pending the authorized hearing under the FDA Act of 2009, these Rules and Regulations, and as far as applicable, other relevant laws; and

(6) To impose the following administrative sanctions/penalties for violations of the provisions of the FDA Act of 2009, these Rules and Regulations, and where applicable, other relevant laws, after observance of and compliance with due process:

(i) Cancellation of any authorization which may have been granted by the FDA, or suspension of the validity thereof for such period of time as he/she may deem reasonable, which shall not exceed one (1) year;

(ii) A fine of not less than Fifty Thousand Pesos (Php50,000.00), but not more than Five Hundred Thousand Pesos (PhP500,000.00). An additional fine of not more than One Thousand Pesos (PhP1,000.00) shall be imposed for each day of continuing violation;

(iii) Destruction and/or appropriate disposition of the subject health product and/or closure of the establishment for any violation of the FDA Act of 2009, these Rules and Regulations, other relevant laws, and FDA-promulgated issuances.

c. Regulatory Powers, Duties and Functions:

(1) *To issue appropriate authorizations that would cover establishments, facilities and health products*[.][43] (Emphasis supplied)

Unlike other quasi-judicial proceedings, legal concepts such as *res judicata*, *stare decisis*, and finality of decisions also have no application in certification and re-certification proceedings.

Science relies on innovation. Even if the scientific community conducts repeated scientific testing and continuous research, conflicting studies and research may always arise to challenge each conclusion. The issuance of a Certificate of Product Registration does not bind the Food and Drug Administration from further testing and investigation. The long-term effects of a new drug are not determined by a final and executory Court of Appeals or Supreme Court decision. Hence, any person may file an action once the health product is "found to have caused the death, illness or serious injury to a consumer or patient, or is found to be imminently injurious, unsafe, [and] dangerously deceptive."[44]

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[43] Implementing Rules and Regulations of Rep. Act No. 9711, Book I, Art. III, Sec. 2 (b) and (c).

[44] Rep. Act No. 3720, Sec. 4(k) as amended by Rep. Act No. 9711.

The Food and Drug Administration is mandated to conduct Post Marketing Surveillance of contraceptives even after the issuance of the Certificate of Product Registration:

> Section 7.09. Post-Marketing Surveillance. All reproductive health products shall be subjected to Post-Marketing Surveillance (PMS) in the country. The PMS shall include, but not be limited to: examining the health risk to the patient, and the risk of pregnancy because of contraceptive failure.
>
> The FDA shall have a sub-unit dedicated to reproductive health products under the Adverse Drug Reaction Unit who will monitor and act on any adverse reaction or event reported by consumers and health professionals or workers. The system for reporting adverse drug reactions/events shall include online reporting at the FDA and DOH website, along with established reporting mechanisms, among others.
>
> Companies with registered products shall be required to have a Post-Marketing Surveillance department, division, section, unit, or group that will monitor and investigate all health-related reactions or risks, or failure of the product to prevent pregnancy.[45]

Post Marketing Surveillance is conducted through sampling, inspecting drug establishments and outlets, and investigating adverse drug reactions.[46] Marketing Authorization Holders are likewise required to submit Periodic Safety Update Reports at regular intervals and Post-Authorization Safety Studies/Post-Authorization Efficacy Studies.[47] Marketing Authorization Holders may also conduct a Phase IV clinical trial when necessary.[48] Certifications of contraceptives cannot be considered "final and executory" if the Food and Drug Administration conducts further examinations on patients for health and pregnancy risks even after it certifies to its non-abortifacience or if the Marketing Authorization Holders are required to monitor their products and conduct further testing.

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[45] Implementing Rules and Regulations of Rep. Act No. 10354.

[46] *See* FDA Circular No. 2013-004.

[47] *See* FDA Circular No. 2013-004.

[48] *See* FDA Circular No. 2013-004.

The Food and Drug Administration's mandate under Republic Act No. 10354 to determine and certify if a contraceptive or intrauterine device is medically safe and non-abortifacient is an exercise of its regulatory function for the "[protection] and [promotion] of the right to health of the Filipino people."[49] The "right of the State as *parens patriae*"[50] is a role that the Food and Drug Administration, as a regulatory agency, undertakes.

In a quasi-judicial proceeding, interested or affected parties must first be given the opportunity to be heard.[51] The primary consideration of administrative due process is the fairness in the procedure.[52]

Proceedings that are regulatory in nature, such as certification and re-certification proceedings of contraceptives, do not require trial-type proceedings. Public participation is required only as a matter of transparency.[53] Oppositors are allowed to submit any data that addresses the science involved, which they believe may overturn the findings of the Food and Drug Administration. It is the duty of the Food and Drug Administration in certification and re-certification proceedings to acknowledge and consider any opposition from the public and address their concerns.

III

At this point, it must be clarified that an *abortifacient* under Section 4 (a) of the Responsible Parenthood and Reproductive Health Act of 2012 (RH Law) is:

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[49] Rep. Act No. 9711, Sec. 3.

[50] *Ponencia*, p. 9.

[51] Concurring Opinion of *J.* Brion in *Perez v. Philippine Telegraph and Phone Company*, 602 Phil. 522, 545 (2009) [Per *J.* Corona, *En Banc*].

[52] *Id.*

[53] See the ADM.CODE, Book VII, Chapt. II, Sec. 9(1) which provides:

Section 9. Public Participation. – (1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

SEC. 4. Definition of Terms. – For the purpose of this Act, the following terms shall be defined as follows:

(a) *Abortifacient* refers to any drug or device that induces abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb upon the determination of the FDA.

Drugs or contraceptives that merely prevent fertilization are not *abortifacient*. Normally, fertilization occurs when a single sperm cell penetrates an egg cell inside a woman's body.[54] In females, egg cells are produced through ovulation.

Ovulation is a complex biological process characterized and defined by periods of elevated hormone production.[55] Every month, the pituitary gland[56] releases a follicle stimulating hormone that promotes the growth of several ovarian follicles. These ovarian follicles each contain an immature egg cell. As these ovarian follicles grow, estrogen is released into the blood stream. Once the level of estrogen peaks, the pituitary gland produces a surge of luteinizing hormones that would signal the most mature follicle to release the egg cell into the fallopian tube.[57]

Although sperm cells have an average lifespan of three (3) to five (5) days within which to travel through the female's reproductive tract, there must be an available egg cell for fertilization to occur.[58] Contraceptives such as Implanon and

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[54] Dissenting Opinion of *J*. Leonen in *Imbong v. Ochoa*, 732 Phil. 1, 612 (2014) [Per *J*. Mendoza, *En Banc*].

[55] Crosta, Peter, *What is Ovulation? What is the Ovulation Calendar?,* MEDICAL NEWS TODAY, available at <http://www.medicalnewstoday.com/articles/150870.php#what_are_the_phases_of_ovulation> (Last visited October 24, 2016).

[56] The pituitary gland is often referred to as the 'master gland.' It is primarily responsible for releasing hormones throughout the body. *See Pituitary Gland Disorders Symptoms,* HORMONE HEALTH NETWORK, available at <http://www.hormone.org/diseases-and-conditions/pituitary/overview> (Last visited October 24, 2016).

[57] *Id*.

[58] *J*. Leonen, Dissenting Opinion in *Imbong v. Ochoa*, 732 Phil. 1, 612 (2014) [Per *J*. Mendoza, *En Banc*].

Implanon NXT (Implanon) work specifically to prevent fertilization.

Implanon is a hormone-releasing subdermal implant that contains a progestin hormone called "etonogestrel."[59] It was first launched in Indonesia in 1998 and is now registered in approximately 80 countries.[60] The implant is a small flexible plastic rod that is inserted under the woman's non-dominant upper arm.[61] Considered as a highly effective[62] and convenient method of contraception, Implanon can provide protection for up to three (3) years.[63] While there are some reports of pregnancies among users, these appear to have been caused by the implant's incorrect insertion.[64]

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[59] *Implanon,* available at <https://www.drugs.com/implanon.html> (Last visited October 21, 2016).

[60] *Rollo*, p. 388.

[61] *Implanon,* available at <https://www.drugs.com/implanon.html> (Last visited October 21, 2016).

[62] *The Single Rod Contraceptive Implant,* Association of Reproductive Health Professionals, last visited <http://www.arhp.org/publications-and-resources/clinical-proceedings/Single-Rod/Efficacy> (Last visited October 24, 2016). *See also Subdermal implantable contraceptives versus other forms of reversible contraceptives or other implants as effective methods of preventing pregnancy,* available at < http://apps.who.int/rhl/fertility/contraception/CD001326_bahamondesl_com/en/> (Last visited October 25, 2016); *Etonogestrel (Implanon), Another Treatment Option for Contraception,* available at < https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2683610/pdf/ptj33_6p337.pdf> (Last visited October 25, 2016); *A multicentre efficacy and safety study of the single contraceptive implant Implanon*, available at < http://humrep.oxfordjournals.org/content/14/4/976.full.pdf+html> (Last visited October 25, 2016); *The contraceptive efficacy of Implanon: a review of clinical trials and marketing experience,* available at < https://www.ncbi.nlm.nih.gov/pubmed/18330813> (Last visited October 25, 2016).

[63] *Implanon,* available at <https://www.drugs.com/implanon.html> (Last visited October 21, 2016). However, Implanon does not provide protection against HIV and other sexually transmitted diseases.

[64] *Implanon contraceptive implant examined,* available at <http://www.nhs.uk/news/2011/01January/Pages/info-implanon-contraceptive-implant.aspx> (Last visited October 25, 2016). *See also Implanon: 600 pregnancies despite contraceptive implant* <http://www.bbc.com/news/health-12117299> (visited October 24, 2016).

The non-abortifacience of Implanon can be explained by its primary mechanism of action. First, it inhibits the surge of luteinizing hormones. This prevents the ovaries from releasing an egg cell into the fallopian tube. Second, Implanon thickens the cervical mucus, which hinders the passage of sperm cells into the uterus.[65] Implanon may also prevent "endometrial proliferation,"[66] the process in which the lining of the uterus thickens. This would make the uterus unsuitable to support a fertilized egg in the unlikely event that fertilization occurs. [67]

Implanon makes it impossible for the sperm cell to unite with an egg cell. Hence, it cannot be considered as an *abortifacient*. This is consistent with Section 4 (a) of the RH Law.

Another point of clarification is the typographical error found in the *fallo* of the ponencia. The ponente, in adopting a portion of Justice Mariano C. Del Castillo's Concurring Opinion[68] in *Imbong v. Ochoa*, had inadvertently equated the term conception with fertilization.

It bears stressing that this Court, in *Imbong v. Ochoa*, recognized that the question on when life begins is both a scientific and medical issue that can only be decided upon proper hearing and evidence.[69] The ponente in *Imbong*, who is also the ponente in this case, clarified that the notion that life begins

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[65] *See* Dionne D. Maddox and Zahra Rahman, *Etonogestrel (Implanon), Another Treatment Option for Contraception,* available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2683610/#b4-ptj33_6p337> (Last visited October 25, 2016).

[66] *See Etonogestrel,* available at <https://www.drugs.com/ppa/etonogestrel.html> (Last visited October 26, 2016).

[67] *See Proliferative Endometrium,* available at <http://www.newhealthadvisor.com/Proliferative-Endometrium.html> (Last visited October 26, 2016).

[68] Concurring and Dissenting Opinion of J. Del Castillo in *Imbong v. Ochoa,* 732 Phil. 1, 401 (2014) [Per J. Mendoza, *En Banc*].

[69] *Id*. at 137.

at fertilization was his personal opinion and was a view not shared by all members of this Court.[70]

Equating conception with fertilization creates the wrong impression that this Court had already determined the exact moment of when life begins. It glosses over the fact that medicine and science are evolving fields of study and disregards the ongoing debate on the matter.

The fields of science and medicine provide fertile grounds for discourse on the commencement of life. Some say that there is life only upon the implantation of a zygote in the mother's womb. Proponents of this theory assert that the viability of a fertilized ovum should be considered in determining when life begins. This is significant with regard to new discoveries in reproductive science.[71]

On the other hand, there are those who say that human life begins only when organs and body systems have already developed and are functioning as a whole. However, some put greater emphasis on the presence of an active brain.[72]

The debate transcends the fields of science and medicine. There are different religious interpretations and opinions on the commencement of life.

The traditional Catholic view holds that life begins at fertilization. This is generally shared by the followers of Buddhism, Sikhism, and Hinduism. However, some Catholics, including prominent philosophers, subscribe to the "theory of delayed animation." According to this theory, the human soul is infused at points after fertilization. Before this happens, there is no human being.[73]

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[70] *Id.*

[71] Dissenting Opinion of *J.* Leonen in *Imbong v. Ochoa,* 732 Phil. 1, 611-618 (2014) [Per *J.* Mendoza, *En Banc*].

[72] *Id.* at 616-618.

[73] *Id.* at 604.

Muslim scholars are also divided on the subject. Some believe that a fetus acquires a soul only in the fourth month of pregnancy, while others believe that a six-day embryo is already entitled to protection.[74]

Varied views among the Constitutional Commissioners also show that the issue of when life begins is not a settled matter. Thus, the term "conception" rather than "fertilized ovum" was adopted during their deliberations.[75]

The view that life begins at fertilization creates ethical dilemmas for assisted reproductive technologies, particularly in vitro fertilization.

In vitro fertilization is a procedure intended to assist in the conception of a child using modern science. In this procedure, the woman's ovaries are stimulated to produce multiple egg cells. These egg cells are later on retrieved for fertilization through insemination or "intracytoplasmic sperm injection."[76] In insemination, healthy sperm cells are mixed with healthy egg cells to produce embryos. In "intracytoplasmic sperm injection," a sperm cell is directly injected into each egg cell.[77] The latter is usually done when there are problems with semen quantity or quality or when prior in vitro fertilization cycles have failed.[78]

After successful fertilization, embryos are incubated for several days. Pre-implantation genetic testing may be conducted to screen embryos for genetic disorders before they are transferred to the uterus.[79]

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[74] *Id*. at 605.

[75] *Id*. at 605-608.

[76] *In vitro fertilization*, available at <http://www.mayoclinic.org/tests-procedures/in-vitro-fertilization/details/what-you-can-expect/rec-20206943> (Last visited October 26, 2016).

[77] *Id*.

[78] *Id*.

[79] *Id*.

The rate of success of in vitro fertilization is greatly affected by age.[80] To increase the chances of pregnancy, multiple embryos are transferred to the uterus.[81] Meanwhile, remaining embryos may be cryopreserved, donated to another, or disposed. However, not all embryos survive cryopreservation; some die during the freezing and thawing process.[82]

This is where the ethical dilemma arises. If life begins at fertilization, those who undergo in vitro fertilization are burdened on what to do with unused embryos. The disposal of embryos would necessarily entail disposal of human lives. Although parents may opt for donation or cryopreservation, these alternatives do not guarantee the survival of remaining embryos.

IV

Petitioners allege that the Food and Drug Administration, by failing to consider and act upon their opposition, had denied them of due process to which they are entitled under the Constitution. Under Section 1, Article III of the Constitution "no person shall be deprived of life, liberty, or property without due process of law."

However, it is not petitioners' life, liberty, or property that would be affected by a certification and re-certification proceeding. Petitioners, not being Market Authorization Holders, possess no property right that may be infringed by the Food and Drug Administration.

There is also no merit to the claim that petitioners' right to life would also be violated, much less affected, by a certification

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[80] See *IVF – Chance of Success,* HUMAN FERTILISATION & EMBRYOLOGY AUTHORITY, <http://www.hfea.gov.uk/ivf-success-rate.html> (Last visited October 26, 2016).

[81] Dissenting Opinion of *J.* Leonen in *Imbong v. Ochoa,* 732 Phil. 1, 621-622 (2014) [Per *J.* Mendoza, *En Banc*].

[82] *Assisted Reproductive Technology a Guide for Patients,* available at <https://www.asrm.org/uploadedFiles/ASRM_Content/Resources/Patient_Resources/Fact_Sheets_and_Info_Booklets/ART.pdf> (Last visited on October 26, 2016).

and re-certification proceeding. In the grand scheme of things, it is the unborn whose life is at stake. Though the cause of petitioners is noble, by no stretch of the imagination could they claim the exclusive right to protect the life of the unborn. The Food and Drug Administration, in the exercise of its regulatory function and as *parens patriae*, carries the significant task of safeguarding the life of the unborn when it determines whether a drug is medically safe for consumption. Parties do not have a monopoly over the protection of the life of the unborn.

Petitioners alleged that they submitted their preliminary oppositions to the list of contraceptives for re-certification.[83] The Food and Drug Administration, however, failed to act on the oppositions or reply to petitioners' inquiries.[84]

The approval of any drug as food product destined for public use is not a matter only between the applicant and the regulator. It affects public health. Ultimately, it is the consumers who are affected. Thus, the process of certification and re-certification is burdened with severe public interest.

Thus, comments and contributions at any stage of the process of certification made by those concerned should not be simply received and filed. The Food and Drug Administration should have gone beyond acknowledgment. It should have summarized the issues and contentions in opposition and addressed them. No trial type or even summary hearing is required. Rather than due process of law, this is the essence of public participation enshrined in our Constitution.

ACCORDINGLY, the Food and Drug Administration should be **ORDERED** to consider and respond to the oppositions filed regarding the re-certification of Implanon and Implanon NXT based on the standards contained in the Reproductive Health Law and the present revised standards contained in the present

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[83] *ALFI, et al. v. Garin, et al.*, G.R. Nos. 217872 & 221866, August 24, 2016 [Per *J.* Mendoza, *En Banc*].

[84] *ALFI, et al. v. Garin, et al.*, G.R. Nos. 217872 & 221866, August 24, 2016 [Per *J.* Mendoza, *En Banc*].

Implementing Rules and Regulations within 60 days from receipt of this decision. Upon promulgation of the resolution of the Food and Drug Administration, the Temporary Restraining Order issued in this case is automatically lifted.

THEREAFTER, the Food and Drug Administration and the Department of Health should amend its implementing rules in accordance with the decision and *Imbong v. Ochoa*.[85]

SECOND DIVISION

[G.R. No. 218666. April 26, 2017]

HEIRS OF LEONILO P. NUÑEZ, SR., namely, VALENTINA A. NUÑEZ, FELIX A. NUÑEZ, FELIXITA A. NUÑEZ, LEONILO A. NUÑEZ, JR., MA. ELIZA A. NUÑEZ, EMMANUEL A. NUÑEZ, ROSE ANNA A. NUÑEZ-DE VERA, and MA. DIVINA A. NUÑEZ-SERNADILLA, represented by their co-heir and Attorney-in-Fact, ROSE ANNA A. NUÑEZ-DE VERA, *petitioners, vs.* **HEIRS OF GABINO T. VILLANOZA, represented by BONIFACIO A. VILLANOZA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; COURT OF APPEALS; IN THE EXERCISE OF ITS APPELLATE JURISDICTION, THE COURT OF APPEALS IS EMPOWERED TO HAVE AN INDEPENDENT FINDING OF FACT OR ADOPT THOSE SET FORTH IN THE DECISION APPEALED FROM, ESPECIALLY WHEN THE FACTUAL FINDING ON THE

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[85] *Imbong v. Ochoa,* 732 Phil. 1(2014) [Per *J.* Mendoza, *En Banc*].

MATTER CONTRADICTS THE EVIDENCE ON RECORD. — The Court of Appeals properly exercised its jurisdiction in finding that "Leonilo P. Nuñez, Sr." was different from "Leonilo Sebastian Nuñez." Contrary to petitioners' allegations, the Court of Appeals could not be estopped simply because the issue was never raised before the Department of Agrarian Reform. In the exercise of its appellate jurisdiction, the Court of Appeals is empowered to have an independent finding of fact or adopt those set forth in the decision appealed from. This is true especially when the factual finding on the matter contradicts the evidence on record. *Asian Terminals, Inc. v. Simon Enterprises, Inc.* has held that even this Court, which generally reviews questions of law, may review questions of facts when the judgment is based on a misapprehension of facts. This Court may likewise do so when there is no citation of specific evidence on which the factual findings are based or when the relevant and undisputed facts have been manifestly overlooked which, if properly considered, would justify a different conclusion. This gives all the more reason for the court of appeals to review questions of facts and law. In *Garcia v. Ferro Chemicals , Inc.,* this Court has also held that a matter not raised by the parties may be reviewed if "necessary for a complete resolution of the case."

2. **ID.; CIVIL PROCEDURE; JUDGMENTS; NO PERSON CAN BE AFFECTED BY ANY PROCEEDING TO WHICH HE OR SHE IS A STRANGER.—** [N]either Villanoza nor his heirs were impleaded in that case. Villanoza and his heirs were non-parties to the mortgage and did not participate in the proceedings for foreclosure and annulment of foreclosure of mortgage. No person can be affected by any proceeding to which he or she is a stranger. Being complete strangers in that case, respondents are not bound by the judgment rendered by this Court.

3. **ID.; EVIDENCE; ADMISSIBILITY; A MOTION FOR RECONSIDERATION CANNOT BE USED AS A VEHICLE TO INTRODUCE NEW EVIDENCE. —** [T]he Court of Appeals properly found that petitioners did not furnish timely and sufficient evidence to prove that "Leonilo P. Nuñez, Sr." was also "Leonilo Sebastian Nuñez." The new pieces of evidence that petitioners attached are inadmissible. *Cansino v. Court of Appeals* has held that "a motion for reconsideration cannot be

used as a vehicle to introduce new evidence." The belated introduction of these documents in a motion for reconsideration before the Court of Appeals violates respondents' right to contest the new evidence presented.

4. ID.; ID.; ID.; DOCUMENTARY EVIDENCE; WHEN THE SUBJECT OF INQUIRY IS THE CONTENTS OF A DOCUMENT, NO EVIDENCE SHALL BE ADMISSIBLE OTHER THAN THE ORIGINAL DOCUMENT ITSELF; DUE EXECUTION AND AUTHENTICITY OF THE BAPTISMAL CERTIFICATE, NOT ESTABLISHED. — [T]he Certificate of Baptism and Teofila's Affidavit are "mere photocopies." Petitioners failed to present the original or certified true copies of these documents. Rule 130, Section 3 of the Rules of Court states that "[w]hen the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself[.] The due execution and authenticity of the baptismal certificate, being a private document, were also not established.

5. ID.; ID.; ID.; ID.; A COPY PURPORTING TO BE AN ANCIENT DOCUMENT MAY BE ADMITTED IN EVIDENCE IF IT BEARS A CERTIFICATION FROM THE PROPER GOVERNMENT OFFICE WHERE THE DOCUMENT IS NATURALLY FOUND GENUINE THAT THE DOCUMENT IS THE EXACT COPY OF THE ORIGINAL ON FILE.— Petitioners did not comply Rule 132, Section 20 of the Rules of Court. Likewise, the photocopy of Teofila's Affidavit may not be considered an ancient document under Rule 132, Section 21 of the Rules of Court x x x. A copy purporting to be an ancient document may be admitted in evidence if it bears a certification from the proper government office where the document is naturally found genuine that the document is the exact copy of the original on file. Here, the photocopied Affidavit of Teofila does not carry such certification from the notary public or the Register of Notaries Public, among others. Petitioners have not shown that the Affidavit of Teofila is free from suspicion and unblemished by alterations.

6. ID.; CIVIL PROCEDURE; JUDGMENTS; THE PARTIES' NON-EXECUTION OF THE COURT'S DECISION CONSTITUTES AN ABANDONMENT OF THEIR RIGHTS; BARE ALLEGATIONS, UNSUBSTANTIATED

BY EVIDENCE, ARE NOT EQUIVALENT TO PROOF, AS THE ONE ALLEGING A FACT HAS THE BURDEN OF PROVING IT.— Even assuming that "Leonilo P. Nuñez, Sr." is also "Leonilo Sebastian," the Court of Appeals correctly ruled that petitioners' non-execution of this Court's Decision in *Nuñez v. GSIS Family Bank* constituted an abandonment of their rights. The Court of Appeals considered this Court's judgment in that case, which was never executed for almost 10 years, a hollow victory. According to the Court of Appeals, "if [petitioners] truly believe that said decision will entitle them to get back the subject property," then they had every reason to have quickly taken steps to enforce the judgment in their favor. x x x. *Cormero v. Court of Appeals* has established that the failure to assert one's right for an unreasonable amount of time leads to the presumption that he or she has abandoned this right. The Court of Appeals properly held that petitioners were barred by *laches* for failing to protect their rights for at least nine (9) years, which was an "unreasonable length of time." In their defense, petitioners aver that they sought for the execution of *Nuñez v. GSIS Family Bank*, only that the sheriff did not implement it. However, they did not show any evidence to prove their claim. "Bare allegations, unsubstantiated by evidence, are not equivalent to proof." The one alleging a fact has the burden of proving it.

7. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (REPUBLIC ACT NO. 6657); RIGHT OF RETENTION; THE LANDOWNER HAS THE OPTION TO CHOOSE THE AREA TO BE RETAINED ONLY IF IT IS COMPACT OR CONTIGUOUS, AND IF THE AREA SELECTED FOR RETENTION IS TENANTED, IT IS FOR THE TENANT TO CHOOSE WHETHER TO REMAIN IN THE AREA OR BE A BENEFICIARY IN THE SAME OR A COMPARABLE AGRICULTURAL LAND.— Section 6 of Republic Act No. 6657 gives the landowner the option to choose the area to be retained only if it is compact or contiguous. The Department of Agrarian Reform, the Office of the President, and the Court of Appeals have consistently found that the land subject of the dispute is neither compact nor contiguous. Section 6 also provides that if the area selected for retention is tenanted, it is for the tenant to choose whether to remain in the area or be a beneficiary

in the same or a comparable agricultural land. Petitioners' Application for Retention stated that Villanoza occupied the property as a tenant and farmer beneficiary. Thus, the option to remain in the same land was for Villanoza to make.

8. **ID.; ID.; ID.; ADMINISTRATIVE ORDER NO. 02-03; THE HEIRS OF A DECEASED LANDOWNER MAY EXERCISE THE RETENTION RIGHT ONLY IF THE LANDOWNER SIGNIFIED HIS OR HER INTENTION TO EXERCISE THE RIGHT OF RETENTION BEFORE AUGUST 23, 1990.—** The landowner's retention right is subject to another condition. Under Section 3.3 of Administrative Order No. 02-03, the heirs of a deceased landowner may exercise the retention right only if the landowner signified his or her intention to exercise the right of retention before August 23, 1990. x x x. Petitioners cannot claim the right of retention through "Leonilo Sebastian" or "Leonilo P. Nuñez, Sr." when the alleged predecessor-in-interest himself failed to do so. The Court of Appeals correctly ruled that during his lifetime, Sebastian did nothing to signify his intent to retain the property being tilled by Villanoza. It was only two (2) years after his death that petitioners started to take interest over it.

9. **ID.; ID.; ID.; ID.; FAILURE TO EXERCISE THE RIGHT OF RETENTION WITHIN 60 DAYS FROM THE NOTICE OF COMPREHENSIVE AGRARIAN REFORM PROGRAM COVERAGE IS DEEMED A WAIVER OF THE RIGHT OF RETENTION.—** Neither was any right of retention exercised within 60 days from the notice of Comprehensive Agrarian Reform Program coverage. The Court of Appeals properly considered this as a waiver of the right of retention, pursuant to Section 6.1 of Administrative Order No. 02-03. Section 6.1 provides that the landowner's "[f]ailure to manifest an intention to exercise his right to retain within sixty (60) calendar days from receipt of notice of CARP coverage" is a ground for losing his or her right of retention. The Department of Agrarian Reform sent a notice of Comprehensive Agrarian Reform Program coverage to GSIS Family Bank, which was then landowner of the disputed property. Neither GSIS Family Bank nor Sebastian exercised any right of retention within 60 days from this notice of coverage. In *Vda. De Dayao v. Heirs of Robles*, this Court has held that the Department of Agrarian Reform "has no authority to decree a

retention when no application was in the first place ever filed." Petitioners themselves admit that the Department of Agrarian Reform sent a notice of coverage to GSIS Family Bank. During this time, no application was ever filed by GSIS Family Bank or petitioners. The same land, which the Republic of the Philippines subsequently acquired, was awarded to Villanoza. While all agrarian reform programs have always accommodated some forms of retention for the landowner, all rights of retention have always been subject to conditions. Unfortunately in this case, the landowner has miserably failed to invoke his right at the right time and in the right moment. The farmer beneficiary should not, in equity, be made to suffer the landowner's negligence.

10. ID.; ID.; CERTIFICATE OF LAND OWNERSHIP AWARDS, EMANCIPATION PATENTS AND OTHER TITLES ISSUED UNDER ANY AGRARIAN REFORM PROGRAM ARE INDEFEASIBLE.— [T]he issuance of the title to Villanoza could no longer be revoked or set aside by Secretary Pangandaman. Acquiring the lot in good faith, Villanoza registered his Certificate of Land Ownership Award title under the Torrens system. He was issued a new and regular title, TCT No. NT-299755, in fee simple; that is to say, it is an absolute title, without qualification or restriction. *Estribillo v. Department of Agrarian Reform* has held that "certificates of title issued in administrative proceedings are as indefeasible as [those] issued in judicial proceedings." Section 2 of Administrative Order No. 03-09 provides that "[t]he State recognizes the indefeasibility of [Certificate of Land Ownership Awards], [Emancipation Patents] and other titles issued under any agrarian reform program." Here, a Certificate of Land Ownership Award title was already issued and registered in Villanoza's favor on December 7, 2007. Villanoza's Certificate of Land Ownership Award was titled under the Torrens system on November 24, 2004. After the expiration of one (1) year, the certificate of title covering the property became irrevocable and indefeasible. Secretary Pangandaman's August 8, 2007 Order, which came almost three (3) years later, was thus ineffective.

APPEARANCES OF COUNSEL

Espiritu and Bandong Law Office for petitioners.

D E C I S I O N

LEONEN, *J.*:

Under the Comprehensive Agrarian Reform Law, the landowner may retain a maximum of five (3) hectares of land, but this land must be compact or contiguous. If the area selected for retention is tenanted, the tenant-farmer may choose to remain in the area or be a beneficiary in a comparable area.

This is a Petition for Review on Certiorari[1] under Rule 45, seeking to reverse the Court of Appeals' September 26, 2014 Decision[2] and June 4, 2015 Resolution,[3] which affirmed the August 11, 2011 Decision of the Office of the President and reinstated the February 23, 2005 Order of the Department of Agrarian Reform Regional Director. This case arose from the proceedings in CA-G.R. SP No. 130544.

Leonilo Sebastian Nuñez (Sebastian) owned a land[4] measuring "more or less" 2.833 hectares (28,333 square meters) located at Barangay Castellano, San Leonardo, Nueva Ecija.[5] This land was covered by Transfer Certificate of Title (TCT) No. NT-143003[6] and was registered on March 16, 1976 to "Leonilo Sebastian . . . married to Valentina Averia."[7]

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[1] *Rollo*, pp. 43-76.

[2] *Id*. at 11-29. The Decision was penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Ramon M. Bato, Jr. and Rodil V. Zalameda of the Sixteenth Division, Court of Appeals, Manila.

[3] *Id*. at 100-105. The Resolution was penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Ramon M. Bato, Jr. and Rodil V. Zalameda of the Former Sixteenth Division, Court of Appeals, Manila.

[4] *Id*. at 165, 176.

[5] *Id*. at 47 and 176-177.

[6] *Id*. at 423-424.

[7] *Id*. at 176-177.

On July 7, 1976, Sebastian mortgaged this property to then ComSavings Bank or Royal Savings and Loan Association, now GSIS Family Bank,[8] to secure a loan. His loan matured on June 30, 1978, but the bank did nothing to collect the payment due at that time.[9]

In 1981, tenant-farmer Gabino T. Villanoza (Villanoza) started tilling Sebastian's land.[10]

It was only on December 11, 1997, about 19 years after the maturity of Sebastian's loan, that GSIS Family Bank extrajudicially foreclosed his mortgaged properties including the land tenanted by Villanoza.[11] A public auction was held, and GSIS Family Bank emerged as "the highest and only bidder."[12]

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[8] "Leonilo Sebastian" and "Leonilo S. Nuñez" refer to "Leonilo Sebastian Nuñez." Leonilo S. Nuñez was the owner of a land covered by TCT No. NT-143003 in Nueva Ecija (see *Nuñez v. GSIS Family Bank*, 511 Phil. 735, 738 (2005) [Per *J*. Carpio Morales, Third Division]). That his middle initial stands for "Sebastian" is shown in the records of the case at hand—the same land in Nueva Ecija was registered on March 16, 1976 to "Leonilo Sebastian. . . married to Valentina Averia" (see *rollo*, pp. 176-177). The Court of Appeals found that the Leonilo S. Nuñez in *Nuñez v. GSIS Family Bank* (see *rollo*, pp. 176-177) is also "Leonilo Sebastian Nuñez" (see *rollo*, p. 104).

[9] The bank foreclosed it only after more than 19 years since Sebastian's loans matured (see *Nuñez v. GSIS Family Bank*, 511 Phil. 735 (2005) [Per *J*. Carpio Morales, Third Division]).

[10] *Id*. at 24.

[11] Villanoza then tenanted the land covered by TCT No. NT-143003 (see *rollo*, p. 47). On July 7, 1976, four months after titling the land in his name, Leonilo Sebastian Nuñez mortgaged TCT No. NT-143003 to GSIS Family Bank, formerly ComSavings Bank. On December 11, 1997, the bank foreclosed the property, which action was questioned by the heirs of Leonilo S. Nuñez, including his wife, Valentina Averia Nuñez (*Nuñez v. GSIS Family Bank*, 511 Phil. 735 (2005) [Per *J*. Carpio Morales, Third Division]; see also *rollo*, pp. 176-177).

[12] *Nuñez v. GSIS Family Bank*, 511 Phil. 735, 740 (2005) [Per *J*. Carpio Morales, Third Division].

Sebastian's land title was cancelled and TCT No. NT-271267 was issued in the name of the new owner, GSIS Family Bank.[13]

On June 20, 2000, Sebastian filed a complaint before the Regional Trial Court to annul the extrajudicial foreclosure sale.[14] Sebastian argued that an action to foreclose the mortgage prescribed after 10 years. GSIS Family Bank's right of action accrued on June 30, 1978,[15] but it only foreclosed the property 19 years later.[16] Thus, its right to foreclose the property was already barred.[17]

While the case was pending at the Regional Trial Court, the Department of Agrarian Reform sent a notice of coverage under Republic Act No. 6657 or the Comprehensive Agrarian Reform Program to GSIS Family Bank, then landowner of the disputed property.[18] Neither GSIS Family Bank nor Sebastian exercised any right of retention within 60 days from this notice of coverage.

On November 10, 2000, the government compulsorily acquired from GSIS Family Bank the land covered by TCT No. NT-271267. The bank's land title was cancelled, and TCT No. NT-276395 was issued in the name of the Republic of the Philippines. The Department of Agrarian Reform put a portion of what is now TCT No. NT-276395 under agrarian reform.[19]

On November 27, 2000, the Department of Agrarian Reform issued an emancipation patent or Certificate of Land Ownership

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[13] *Rollo*, p. 61.

[14] *Nuñez v. GSIS Family Bank*, 511 Phil. 735, 740 (2005) [Per *J*. Carpio Morales, Third Division].

[15] June 30, 1978 was the date of maturity of the loans.

[16] *Id*. at 741.

[17] *Nuñez v. GSIS Family Bank*, 511 Phil. 735 (2005) [Per *J*. Carpio Morales, Third Division].

[18] *Rollo*, p. 61.

[19] GSIS Family Bank's land title, TCT No. NT-271267, "was subsequently cancelled, and TCT No. 276395 was issued in the name of the Republic of the Philippines by virtue of the compulsory acquisition made by [the Deparment of Agrarian Reform,] pursuant to R[epublic] A[ct No.] 6657, as amended." (*Id*. at 379, DAR Regional Office Order dated September 2, 2004).

Award (CLOA No. 00554664) to Villanoza.[20] The Certificate of Land Ownership Award title was generated but not yet released as of February 23, 2005.[21]

During the pendency of his complaint to annul the extrajudicial foreclosure sale, Sebastian died and his heirs, namely: Valentina A. Nuñez, Felix A. Nuñez, Felixita A. Nuñez, Leonilo A. Nuñez, Jr., Eliza A. Nuñez, Emmanuel A. Nuñez, and Divina A. Nuñez, substituted him.[22]

On August 9, 2002, the Regional Trial Court found that GSIS Family Bank's cause of action had prescribed.[23] "[T]herefore, the proceedings for extrajudicial foreclosure of real estate mortgages [against Sebastian, as substituted by his heirs,][24] were null and void."[25] GSIS Family Bank appealed the case before the Court of Appeals.[26]

On March 1, 2004, some of herein petitioners Leonilo A. Nuñez, Jr., Ma. Eliza A. Nuñez, Emmanuel A. Nuñez, Rose Anna Nuñez-De Vera, and Ma. Divina Nuñez-Sernadilla, represented by attorney-in-fact Ma. Eliza A. Nuñez (petitioners), submitted a Sworn Application for Retention (Application for Retention). Their Application for Retention was made pursuant

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[20] *Id*. at 344, TCT No. CLOA-CA-19731.

[21] *Id*. at 379. The Certificate of Land Ownership Award was already generated in Villanoza's name, as evidenced by CLOA No. 00554664 (*rollo*, p. 344). The Department of Agrarian Reform ordered this to be issued and released to him on February 23, 2005 (*rollo*, p. 179).

[22] His heirs were Valentina A. Nuñez, Felix A. Nuñez, Felixita A. Nuñez, Leonilo A. Nuñez, Jr., Eliza A. Nuñez, Emmanuel A. Nuñez, and Divina A. Nuñez (*Nuñez v. GSIS Family Bank*, 511 Phil. 735, 741 (2005) [Per *J*. Carpio Morales, Third Division])

[23] *Nuñez v. GSIS Family Bank*, 511 Phil. 735, 741-742 (2005) [Per *J*. Carpio Morales, Third Division].

[24] *Id*. at 735. Namely, Valentina A. Nuñez, Felix A. Nuñez, Felixita A. Nuñez, Leonilo A. Nuñez, Jr., Eliza A. Nuñez, Emmanuel A. Nuñez, and Divina A. Nuñez.

[25] *Id*. at 741-742.

[26] *Id*. at 743.

to Republic Act No. 6657 and filed before the Department of Agrarian Reform, naming "Leonilo P. Nu[ñ]ez" (Nuñez, Sr.), instead of Sebastian, as the registered owner of the land.[27] It was filed almost four (4) years after the Department of Agrarian Reform issued a notice of coverage over the same property.[28]

Petitioners applied to retain this land[29] although the stated name of their predecessor-in-interest "Leonilo Sebastian," as found in TCT No. NT-143003[30] or "Leonilo Sebastian Nuñez" as found in *Nuñez v. GSIS Family Bank*, was different from "Leonilo P. Nuñez" as found in the Sworn Application for Retention.[31]

In the Order dated September 2, 2004, the Department of Agrarian Reform Region III Director Narciso B. Nieto (Regional Director Nieto) denied petitioners' Application for Retention and ordered the release of Certificate of Land Ownership Award in favor of Villanoza. Regional Director Nieto ruled that petitioners were not entitled to retain the land under Republic Act No. 6657, as their predecessor-in-interest was not qualified under Presidential Decree No. 27.[32] Thus, his heirs could not avail themselves of a right which he himself did not have.[33]

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[27] *Rollo*, pp. 155-160, Sworn Application for Retention; *rollo*, pp. 248-250, Transfer Certificate of Title Nos. NT-143004, NT-143006, NT-143002.

[28] The government compulsorily acquired the land on November 10, 2000 (*rollo*, p. 418) after a Notice of Coverage was sent to GSIS Family Bank, which was the registered owner at that time (*Rollo*, p. 61; see also www.dar.gov.ph/notice-of-coverage). The Nuñez heirs applied to retain the property only on March 1, 2004 (*rollo*, pp. 155-160).

[29] The 2.833 hectares of land was previously owned by Sebastian and distributed to farmer-beneficiary Villanoza (*Id*. at 344, TCT No. CLOA-CA-19731).

[30] *Rollo*, pp. 176-177.

[31] *Id*. at 155.

[32] Decreeing The Emancipation Of Tenants From The Bondage Of The Soil, Transferring To Them The Ownership Of The Land They Till And Providing The Instruments And Mechanism Therefor.

[33] *Rollo*, p. 380, DAR Regional Office Order dated September 2, 2004.

The dispositive portion of the Department of Agrarian Reform Regional Office's September 2, 2004 Order read:

> WHEREFORE, premises considered, an ORDER is hereby issued:
>
> 1. DENYING the application for retention filed by the heirs of the late Leonilo S. Nu[ñ]ez, Sr., as represented by their co-heir/attorney-in-fact, Ma. Eliza A. Nu[ñ]ez, involving the 4.9598 hectares, embraced by TCT Nos. NT-143003; P-8537; and P-9540, situated at Barangay Castellano, San Leonardo, Nueva Ecija, for lack of merit;
> 2. DIRECTING the DAR personnel concerned to acquire the rest of the landholdings and distribute the same to qualified beneficiaries pursuant to existing DAR policies, rules and regulations; and
> 3. ORDERING the DAR personnel concerned to issue and release TCT CLOA-CA-19771 with CLOA No. 00554664 covering the 28,833 square meters, more or less, in favor of Gabino T. Villanoza.
>
> SO ORDERED.[34]

On September 23, 2004, petitioners filed a Motion for Reconsideration.[35]

Meanwhile, Villanoza registered his Certificate of Land Ownership Award title under the Torrens system.[36] On November 24, 2004, the Certificate of Land Ownership Award title was cancelled and a new regular title, TCT No. NT-299755, was issued in his name.[37]

On February 23, 2005, Regional Director Nieto partially modified his September 2, 2004 Order.[38] He held that petitioners

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[34] *Id*.

[35] *Id*. at 222-228.

[36] *Id*. at 26.

[37] *Id*. at 346, TCT No. NT-299755. The name was misspelled as "Gavino T. Villanoza."

[38] *Id*. at 14.

were entitled to a retention area of not more than five (5) hectares from the total landholdings, but they could not retain the property covered under TCT No. NT-143003 (now TCT No. NT-299755) as it was neither compact nor contiguous.[39] Petitioners were ordered to choose their retained area from the other lots of their predecessor-in-interest.

The dispositive portion of Regional Director Nieto's reconsidered Order[40] dated February 23, 2005 read:

> WHEREFORE, premises considered, the ORDER, dated September 2, 2004, issued by this Office in the above case is hereby RECONSIDERED, and is accordingly modified, as follows:
>
> 1. GRANTING the heirs of the late Leonilo P. Nu[ñ]ez, Sr., as represented by their co-heir/attorney-in-fact, Ma. Eliza A. Nu[ñ]ez, to retain five (5) hectares of their landholdings at Barangay Castellano, San Leonardo, Nueva Ecija, *provided the same must be compact, contiguous[,] and least prejudicial to the tenants therein pursuant to RA No. 6657, as amended*;
> 2. MAINTAINING the tenants affected in the retained area as lessees pursuant to RA No. 3844;
> 3. DIRECTING the DAR personnel concerned to acquire the rest of the landholdings and distribute the same to qualified beneficiaries pursuant to existing DAR policies, rules and regulations; and
> 4. ORDERING the DAR personnel concerned to issue and release TCT-CA-19771 with CLOA No. 00554664 covering the 28,833 square meters, more or less, in favor of Gabino T. Villanoza.
>
> SO ORDERED.[41] (Emphasis in the original)

On March 21, 2005, petitioners appealed the February 23, 2005 Regional Director Order before the Office of Department

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[39] *Id*. at 15.

[40] *Id*. at 382-384.

[41] *Id*. at 383.

of Agrarian Reform Secretary Nasser C. Pangandaman (Secretary Pangandaman).[42]

In the meantime, this Court reversed the ruling of the Court of Appeals and reinstated that of the Regional Trial Court on November 17, 2005 in *Nuñez v. GSIS Family Bank*.[43] It held that GSIS Family Bank's foreclosure of Sebastian's mortgage was null and void and that his heirs were the rightful owners of the property.[44] The heirs, however, did not move to execute this Decision.[45]

As for the Application for Retention, Secretary Pangandaman directed the cancellation of Villanoza's Certificate of Land Ownership Award title in the Order dated August 8, 2007.[46] According to him, Section 6 of Republic Act No. 6657 "[did] not require that the landholding (sought to be retained) should always be compact and contiguous,"[47] particularly so if it involved "small landownership of bits and pieces in hectarage."[48] The dispositive portion of Secretary Pangandaman's August 8, 2007 Order read:

> WHEREFORE, premises considered, the instant Appeal is hereby GRANTED. Accordingly, the Order dated 23 February 2005 issued by the Regional Director of DAR Regional Office-Ill is hereby REVERSED and SET ASIDE. Thus, a new Order is hereby issued to read as follows:
>
> 1. GRANTING the landowners, herein applicants-appellants, the five (5) hectares as their retention area;
> 2. DIRECTING the [Provincial Agrarian Reform Officer], [Municipal Agrarian Reform Officer], or landowner concerned

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[42] *Id.* at 202-202-A.

[43] 511 Phil. 735 (2005) [Per *J.* Carpio Morales, Third Division].

[44] *Id.* at 749-750.

[45] *Rollo*, p. 147.

[46] *Id.* at 15.

[47] Citing the case of *Tenants of the Estate of Dr. Jose Sison v. Court of Appeals*, 285 Phil. 1080 (1992) [Per *J.* Griño-Aquino, First Division].

[48] *Rollo*, p. 16.

to initiate the cancellation of the CLOA No. 00554664 issued to GA[B]INO T. VILLANOZA;

3. GRANTING the tenant to exercise the option whether to remain in the retained area as a leaseholder or be a beneficiary in another agricultural land with similar comparable features, the choice of one forfeits the other option; and

4. DIRECTING the [Municipal Agrarian Reform Officer] concerned to assist the parties in the execution of the Leasehold Agreement, if warranted.

SO ORDERED.[49]

On September 6, 2007, Villanoza filed a Motion for Reconsideration (Villanoza's Motion for Reconsideration).[50] He argued that the title issued to him was already indefeasible and the land it covered was "not compact and contiguous."[51]

On April 25, 2008, Villanoza died[52] and his heirs substituted him.[53]

On December 10, 2008, Secretary Pangandaman resolved to deny Villanoza's Motion for Reconsideration.[54]

Respondents heirs of Villanoza appealed before the Office of the President,[55] which ruled[56] in their favor on August 11,

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[49] *Id*.

[50] *Id*. at 391-402.

[51] *Id*. at 392.

[52] *Id*. at 18.

[53] Gabino T. Villanoza's heir, respondent Bonifacio Villanoza, filed a Notice of Appeal with Motion for Substitution of Parties and to Litigate as Pauper Litigants (*rollo*, p. 18). On February 19, 2009, the Office of the President recognized the appeal (*rollo*, pp. 323-324). The Villanoza heirs, represented attorney-in-fact Bonifacio Villanoza, filed their Memorandum on March 11, 2009 (*rollo,* pp. 325-340).

[54] *Id*. at 411-414.

[55] *Rollo*, p. 141.

[56] Through the Office of Executive Secretary Paquito N. Ochoa, Jr. (*rollo*, pp. 141-145).

2011. Interpreting Section 6 of Republic Act No. 6657, it held that the land sought to be retained "must be compact and contiguous,"[57] contrary to the view of the Department of Agrarian Reform in its August 8, 2007 Order. Section 6 of Republic Act No. 6657 gives the landowners the right to retain[58] up to five (5) hectares[59] of land covered by the Comprehensive Agrarian Reform Program.

According to the Office of the President, the proceedings before Regional Director Nieto established that petitioners had other landholdings which, taken together, exceeded the five (5)-hectare retention limit allowed by law. Likewise, it held that Villanoza's title had become "irrevocable and indefeasible."[60]

The dispositive portion of the Office of the President Decision dated August 11, 2011 read:

WHEREFORE, PREMISES CONSIDERED, the appealed Orders dated August 8, 2007 and December 10, 2008 of the Honorable Secretary Nasser C. Pangandaman, Department of Agrarian Reform (DAR), are hereby REVERSED and SET ASIDE. The Order dated February 23, 2005 rendered by the Regional Director of DAR Region III is hereby reinstated.

SO ORDERED.[61]

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[57] *Id*. at 144.

[58] See Rep. Act No. 6657, Sec. 6.

Section 6. Retention Limits. — Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares.

[59] See also DAR Adm. Order No. 02 (2003), Sec. 8.6 which provides:

A landowner whose landholdings are covered under CARP may retain an area of not more than five (5) hectares thereof.

[60] *Rollo*, pp. 18-19.

[61] *Id*. at 145.

Petitioners moved for reconsideration,[62] which the Office of the President denied in its Order dated May 30, 2013.[63]

In the Decision dated September 26, 2014, the Court of Appeals likewise denied[64] the appeal for lack of merit. It held that the Department of Agrarian Reform should have rejected petitioners' Application for Retention outright as petitioners failed to prove that Sebastian intended to make the land, measuring more or less 2.833 hectares and now titled in Villanoza's favor, a part of his retained holdings.[65]

Neither the heirs of Sebastian may invoke this right. Citing Administrative Order No. 02-03, Section 3.3,[66] the Court of Appeals held that petitioners could only exercise the retention right had Sebastian himself manifested before August 23, 1990 that he wished to exercise this right. August 23, 1990 was the day when this Court's ruling in *Association of Small Landowners in the Philippines vs. Honorable Secretary of Agrarian Reform*[67] became final.[68] Administrative Order No. 02-03 was issued pursuant to *Association of Small Landowners in the Philippines*, Presidential Decree No. 27, and Section 6 of Republic Act No. 6657.[69]

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[62] *Id*. at 434-453.

[63] *Id*. at 146-148.

[64] *Id*. at 11-29.

[65] *Id*. at 24-25. Section 2.2 of the Department of Agrarian Reform Administrative Order No. 02-03 states that the landowner may exercise his or her retention rights "by signifying [his or her] intention to retain [a maximum of five hectares of land] within sixty (60) days from receipt of notice of coverage. Failure to do so within the period shall constitute a waiver of the right to retain any area."

[66] The right of retention of a deceased landowner may be exercised by his heirs provided that the heirs must first show proof that the decedent landowner had manifested during his lifetime his intention to exercise his right of retention prior to 23 August 1990.

[67] 256 Phil. 777 (1989) [Per *J*. Cruz, *En Banc*].

[68] See DAR Adm. Order No. 02 (2003).

[69] *Id*.

The Court of Appeals added that the ruling in *Nuñez v. GSIS Family Bank* could not apply to the parties here. That case pertained to the claim of "Leonilo Sebastian Nuñez" while this case pertains to the claim of petitioners over the same lot but in their capacities as heirs of "Leonilo P. Nuñez, Sr."[70] Petitioners failed to present any evidence that "Leonilo P. Nuñez, Sr." and "Leonilo Sebastian Nuñez" were the same person.[71]

Even assuming that they referred to only one person, the Court of Appeals questioned petitioners' failure to push for the execution of this Court's Decision in *Nuñez v. GSIS Family Bank*. That ruling was promulgated on November 17, **2005**, but as of September 26, **2014**, there was no information yet as to the status of the decision in that case.[72] The Court of Appeals held that petitioners were barred by *laches* for failing to protect their rights for an unreasonable length of time or for nine (9) long years.[73]

The dispositive portion of the Decision dated September 26, 2014 read:

> **WHEREFORE**, premises considered, the petition for review is **DENIED** for lack of merit. The Decision dated August 11, 2011 and Order dated May 30, 2013 issued by the Office of the President in O.P. Case No. 09-A-022 is **AFFIRMED** insofar as it reinstated the February 23, 2005 Order of the DAR Regional Director confirming the title issued in favor of Gabino T. Villanoza.
>
> **SO ORDERED.**[74] (Emphases in the original)

In their Motion for Reconsideration, petitioners posited that Nuñez, Sr. did not receive a notice of Comprehensive Agrarian

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[70] This case adds attorney-in-fact Rose Anna A. Nuñez-De Vera as one of the heirs of Leonilo P. Nuñez, Sr. *Nuñez v GSIS*, however, did not include her. Also, this case mentions Eliza's and Divina's names as "Ma. Eliza A. Nuñez" and "Ma. Divina A. Nuñez-Sernadilla," respectively.

[71] *Rollo*, p. 27.

[72] *Id.* at 28.

[73] *Id.* at 104.

[74] *Id.* at 28.

Reform Program coverage from the Department of Agrarian Reform; thus, he could not be deemed to have waived his right to retain the property.[75] They also submitted, for the first time, photocopies of Nuñez, Sr.'s Certificate of Baptism[76] and the Affidavit of Nuñez, Sr.'s mother, Teofila Patiag vda. de Nuñez (Teofila), dated September 14, 1959.[77]

According to the baptismal certificate, "Leonilo S. Nuñez" was the son of Teofila Patiag and Felix Nuñez.[78] Meanwhile, Teofila's Affidavit stated that "Leonilo Sebastian Nu[ñ]ez" and "Leonilo P. Nu[ñ]ez" referred to "one and the same person only."[79] The Affidavit was allegedly an ancient document which the Court of Appeals could consider in evidence.[80] Therefore, petitioners argued, this Court's ruling in *Nuñez v. GSIS Family Bank* had become immutable and unalterable in their favor.[81]

In its Resolution[82] dated June 4, 2015, the Court of Appeals denied petitioners' Motion for Reconsideration, which petitioners appealed before this Court.

On April 6, 2016, this Court[83] required the respondents to comment. In their Comment[84] dated July 5, 2016, respondents pointed out the absence of any evidence on record to show that "Leonilo Sebastian Nuñez" and "Leonilo P. Nuñez" were the same person.[85] They also objected to the petitioners' belated

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[75] *Id*. at 478-480.

[76] *Id*. at 488.

[77] *Id*. at 489, Teofila's Affidavit.

[78] *Id*. at 488, Certificate of Baptism.

[79] *Id*. at 489.

[80] *Id*. at 482.

[81] *Id*. at 65-67.

[82] *Id*. at 100-105.

[83] *Id*. at 509.

[84] *Id*. at 519-527. Comment with Entry of Appearance.

[85] *Id*. at 521.

presentation of new pieces of evidence in a motion for reconsideration before the Court of Appeals.[86]

They added that, in the eyes of the law, GSIS Family Bank was the landowner when the government compulsorily acquired the property.[87] However, GSIS Family Bank did not exercise its retention right within 60 days from receipt of the notice of coverage.[88]

When this Court promulgated *Nuñez v. GSIS Family Bank*, the land was already distributed to tenant-farmer Villanoza.[89] Meanwhile, this Court's decision was never executed against GSIS Family Bank.[90]

For resolution are the following issues:

First, whether the Court of Appeals properly exercised its appellate jurisdiction;

Second, whether *Nuñez v. GSIS Family Bank* binds respondents; and

Finally, whether petitioners have a right of retention over the land measuring "more or less" 2.833 hectares awarded to farmer beneficiary Gabino T. Villanoza.

I

The Comprehensive Agrarian Reform Program, signed into law by then President Corazon C. Aquino on June 10, 1988, is the government initiative to comply with the constitutional directive to grant ownership of agricultural lands to landless farmers, agricultural lessees, and farmworkers.[91] As of December 31,

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[86] *Id*.

[87] *Id*. at 520.

[88] *Id*.

[89] *Id*.

[90] *Id*. at 521.

[91] Q and A: The Comprehensive Agrarian Reform Program, available at <http://www.gov.ph/2014/06/30/q-and-a-the-comprehensive-agrarian-reform-program/>. (last visited April 24, 2017).

2013, about 6.9 million hectares of land, or 88% of the total land subject to agrarian reform, has been acquired and distributed by the government.[92]

To understand the context of the issue relating to a retention right, this Court reviews the history of the agrarian reform program.

Prior to any colonization, various ethnolinguistic cultures had their own customary laws governing their property relationships. The arrival of the Spanish introduced the concept of encomienda, or royal land grants,[93] to loyal Spanish subjects, particularly the soldiers.[94] Under King Philip II's decree, the encomienderos or landowners were tasked "to maintain peace and order" within their encomiendas, to protect the large estates from external attacks, and to support the missionaries in converting the natives into Christians.[95] In turn, the encomienderos had the right to collect tributes or taxes such as gold, pearls, cotton cloth,[96] chickens, and rice[97] from the natives

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[92] Q and A: The Comprehensive Agrarian Reform Program, available at <http://www.gov.ph/2014/06/30/q-and-a-the-comprehensive-agrarian-reform-program/>. (last visited April 24,2017).

[93] Department of Agrarian Reform, Agrarian Reform History, available at <http://www.dar.gov.ph/about-us/agrarian-reform-history>. (last visited April 24, 2017).

[94] Anderson, Eric A., *The Encomienda in Early Philippine Colonial History*, 14 ASIAN STUDIES JOURNAL 25, 31 (1976). Available at <http://www.asj.upd.edu.ph/mediabox/archive/ASJ-14-2-1976/anderson-encomienda-philippine-history.pdf> (Last visited April 24, 2017).

[95] Department of Agrarian Reform, Agrarian Reform History, available at <http://www.dar.gov.ph/about-us/agrarian-reform-history>. (last visited April 24, 2017).

[96] Anderson, Eric A., *The Encomienda in Early Philippine Colonial History*, 14 ASIAN STUDIES JOURNAL 25, 27 (1976). Available at <http://www.asj.upd.edu.ph/mediabox/archive/ASJ-14-2-1976/anderson-encomienda-philippine-history.pdf>. (Last visited April 24, 2017).

[97] Wolters, W., *A Comparison Between the Taxation Systems in the Philippines Under Spanish Rule and Indonesia Under Dutch Rule During the 19th Century*, 21 ASIAN STUDIES JOURNAL 79, 89 (1983). Available at <www.asj.upd.edu.ph/mediabox/archive/ASJ-21-1983/wolters.pdf>. (Last visited April 24, 2017).

called indios.[98] The encomienda system helped Hispanicize the natives and extended Spanish colonial rule by pacifying the early Filipinos within the estates.[99]

There were three (3) kinds of encomiendas: the royal encomiendas, which belonged to the King; the ecclesiastical encomiendas, which belonged to the Church; and the private encomiendas, which belonged to private individuals. The local elites were exempted from tribute-paying and labor, or *polo services*,[100] required of the natives.

The encomienda system was abused by the encomienderos.[101] Filipinos were made to pay tribute more than what the law required. Their animals and crops were taken without just compensation, and they were forced to work for the encomienderos.[102]

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[98] Department of Agrarian Reform, Agrarian Reform History, available at <http://www.dar.gov.ph/about-us/agrarian-reform-history>. (last visited April 24, 2017).

[99] Anderson, Eric A., *The Encomienda in Early Philippine Colonial History*, 14 ASIAN STUDIES JOURNAL 25, 31 (1976). Available at <http://www.asj.upd.edu.ph/mediabox/archive/ASJ-14-2-1976/anderson-encomienda-philippine-history.pdf>. (Last visited April 24, 2017).

[100] Wolters, W., *A Comparison Between the Taxation Systems in the Philippines Under Spanish Rule and Indonesia Under Dutch Rule During the 19th Century*, 21 ASIAN STUDIES JOURNAL 79, 85 and 97 (1983). Available at <www.asj.upd.edu.ph/mediabox/archive/ASJ-21-1983/wolters.pdf> (Last visited April 24, 2017).

[101] Department of Agrarian Reform, Agrarian Reform History, available at <http://www.dar.gov.ph/about-us/agrarian-reform-history>. (last visited April 24, 2017).

[102] Anderson, Eric A., *The Encomienda in Early Philippine Colonial History*, 14 ASIAN STUDIES JOURNAL 25, 27-30 (1976). Available at <http://www.asj.upd.edu.ph/mediabox/archive/ASJ-14-2-1976/anderson-encomienda-philippine-history.pdf>. (Last visited April 24, 2017).

Thus, the indios, who once freely cultivated the lands, became mere share tenants[103] or dependent sharecroppers of the colonial landowners.[104]

In the 1899 Malolos Constitution and true to one (1) of the principal concerns of the Philippine Revolution, then President General Emilio Aguinaldo declared "his intention to confiscate large estates, especially the so-called [f]riar lands."[105] Unfortunately, the First Philippine Republic did not last long.

The encomienda system was a vital source of revenue and information on the natives for the Spanish crown.[106] In the first half of the 19th century, the cash crop economy emerged after the Philippines integrated into the world market,[107] increasing along with it the powers of the local elites, called *principalias*, and landlords.[108]

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[103] Department of Agrarian Reform, Agrarian Reform History, available at <http://www.dar.gov.ph/about-us/agrarian-reform-history>. (last visited April 24, 2017).

[104] Wolters, W., *A Comparison Between the Taxation Systems in the Philippines Under Spanish Rule and Indonesia Under Dutch Rule During the 19th Century*, 21 ASIAN STUDIES JOURNAL 79, 97 (1983). Available at <www.asj.upd.edu.ph/mediabox/archive/ASJ-21-1983/wolters.pdf>. (Last visited April 24, 2017).

[105] Department of Agrarian Reform, Agrarian Reform History, available at <http://www.dar.gov.ph/about- us/agrarian-reform-history>. (last visited April 24, 2017).

[106] Anderson, Eric A., *The Encomienda in Early Philippine Colonial History*, 14 ASIAN STUDIES JOURNAL 25, 27 (1976). Available at <http://www.asj.upd.edu.ph/mediabox/archive/ASJ-14-2-1976/anderson-encomienda-philippine-history.pdf>. (Last visited April 24, 2017).

[107] Wolters, W., *A Comparison Between the Taxation Systems in the Philippines Under Spanish Rule and Indonesia Under Dutch Rule During the 19th Century*, 21 ASIAN STUDIES JOURNAL 79, 97 (1983). Available at <www.asj.upd.edu.ph/mediabox/archive/ASJ-21-1983/wolters.pdf>. (Last visited April 24, 2017).

[108] Wolters, W., *A Comparison Between the Taxation Systems in the Philippines Under Spanish Rule and Indonesia Under Dutch Rule During the 19th Century*, 21 ASIAN STUDIES JOURNAL 79, 97 (1983). Available at <www.asj.upd.edu.ph/mediabox/archive/ASJ-21-1983/wolters.pdf>. (Last visited April 24, 2017).

The United States arrived later as the new colonizer. It enacted the Philippine Bill of 1902, which limited land area acquisitions into 16 hectares for private individuals and 1,024 hectares for corporations.[109] The Land Registration Act of 1902 (Act No. 496) established a comprehensive registration of land titles called the Torrens system.[110] This resulted in several ancestral lands being titled in the names of the settlers.[111]

The Philippines witnessed peasant uprisings including the *Sakdalista* movement in the 1930's.[112] During World War II, peasants and workers organizations took up arms and many identified themselves with the Hukbalahap, or *Hukbo ng Bayan Laban sa Hapon*.[113] After the Philippine Independence in 1946, the problems of land tenure remained and worsened in some

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[109] Section 15. That the Government of the Philippine Islands is hereby authorized and empowered, on such terms as it may prescribe, by general legislation, to provide for the granting or sale and conveyance to actual occupants and settlers and other citizens of said Islands such parts and portions of the public domain, other than timber and mineral lands, of the United States in said Islands as it may deem wise, not exceeding sixteen [16] hectares to any one person and for the sale and conveyance of not more than one thousand and twenty-four [1,024] hectares to any corporation or association of persons: Provided, That the grant or sale of such lands, whether the purchase price be paid at once or in partial payments, shall be conditioned upon actual and continued occupancy, improvement, and cultivation of the premises sold for a period of not less than five years, during which time the purchaser or grantee cannot alienate or encumber said land or the title thereto; but such restriction shall not apply to transfers of rights and title of inheritance under the laws for the distribution of the estates of decedents.

[110] *Id*.

[111] Separate Opinion of *J*. Puno in *Cruz v. DENR*, 400 Phil. 904, 932-1016 (2009) [Per Curiam, *En Banc*].

[112] See Separate Opinion of *C.J.* Corona in *Hacienda Luisita, Inc. v. Presidential Agrarian Reform Council*, 668 Phil. 365-698 (2011) [Per *J*. Velasco, *En Banc*].

[113] Department of Agrarian Reform, Agrarian Reform History, available at <http://www.dar.gov.ph/about-us/agrarian-reform-history>. (last visited April 24, 2017)

parts of the country.[114] The Hukbalahaps continued the peasant uprisings in the 1950s.[115]

To address the farmers' unrest, the government began initiating various land reform programs, roughly divided into three (3) stages.

The first stage was the share tenancy system under then President Ramon Magsaysay (1953-1957).[116] In a share tenancy agreement, the landholder provided the land while the tenant provided the labor for agricultural production.[117] The produce

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[114] *Id*.

[115] See also Separate Opinion of *C.J.* Corona in *Hacienda Luisita, Inc. v. Presidential Agrarian Reform Council*, 668 Phil. 365-698 (2011) [Per *J.* Velasco, *En Banc*].

[116] Department of Agrarian Reform, Agrarian Reform History, available at <http://www.dar.gov.ph/about-us/agrarian-reform-history>. (last visited April 24, 2017). Several land reform laws were promulgated during Magsaysay's tenure. Republic Act No. 1160 implemented the free distribution of agricultural lands of the public domain and, to give land to landless Filipino citizens, created the National Resettlement and Rehabilitation Administration. The National Resettlement and Rehabilitation Administration resettled landless farmers and gave rebel returnees home lots and farmlands in Palawan and Mindanao.

[117] Rep. Act No. 1199, Sec. 4 provides:

Section 4. Systems of Agricultural Tenancy; Their Definitions. — Agricultural tenancy is classified into leasehold tenancy and share tenancy.

Share tenancy exists whenever two persons agree on a joint undertaking for agricultural production wherein one party furnishes the land and the other his labor, with either or both contributing any one or several of the items of production, the tenant cultivating the land personally with the aid of labor available from members of his immediate farm household, and the produce thereof to be divided between the landholder and the tenant in proportion to their respective contributions. Leasehold tenancy exists when a person who, either personally or with the aid of labor available from members of his immediate farm household, undertakes to cultivate a piece of agricultural land susceptible of cultivation by a single person together with members of his immediate farm household, belonging to or legally possessed by, another in consideration of a price certain or ascertainable to be paid by the person cultivating the land either in percentage of the production or in a fixed amount in money, or in both.

would then be divided between the parties in proportion to their respective contributions.[118] On August 30, 1954, Congress passed Republic Act No. 1199 (Agricultural Tenancy Act), ensuring the "equitable division of the produce and [the] income derived from the land[.]"[119]

Compulsory land registration was also established under the Magsaysay Administration. Republic Act No. 1400 (Land Reform Act) granted the Land Tenure Administration the power to purchase or expropriate large tenanted rice and corn lands for resale to bona fide tenants or occupants who owned less than six (6) hectares of land.[120] However, Section 6(2) of Republic Act No. 1400 set unreasonable retention limits at 300 hectares for individuals and 600 hectares for corporations,[121] rendering President Magsaysay's efforts to redistribute lands futile.

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[118] Rep. Act No. 1199, Sec. 4.

[119] Rep. Act No. 1199, Sec. 2 provides:

Section 2. Purposes. — It is the purpose of this Act to establish agricultural tenancy relations between landholders and tenants upon the principle of school justice; to afford adequate protection to the rights of both tenants and landholders; to insure an equitable division of the produce and income derived from the land; to provide tenant-farmers with incentives to greater and more efficient agricultural production; to bolster their economic position and to encourage their participation in the development of peaceful, vigorous and democratic rural communities.

[120] Rep. Act No. 1400, Sec. 6(1) provides:

Section 6. Powers. — In pursuance of the policy enunciated in section two hereof, the Administration is authorized to:

(1) Purchase private agricultural lands for resale at cost to bona fide tenants or occupants, or in the case of estates abandoned by the owners for the last five years, to private individuals who will work the lands themselves and who are qualified to acquire or own lands but who do not own more than six hectares of lands in the Philippines[.]

[121] Rep. Act No. 1400, Sec. 6(2) provides:

Section 6(2). Initiate and prosecute expropriation proceedings for the acquisition of private agricultural lands in proper cases, for the same purpose of resale at cost: Provided, That the power herein granted shall apply only to private agricultural lands as to the area in excess of three hundred [300] hectares of contiguous area if owned by natural persons and as to the area

On August 8, 1963, Congress enacted Republic Act No. 3844 (Agricultural Land Reform Code) and abolished the share tenancy system,[122] declaring it to be against public policy. The second stage of land reform, the agricultural leasehold system, thus began under President Diosdado Macapagal (1961-1965).

Under the agricultural leasehold system, the landowner, lessor, usufructuary, or legal possessor furnished his or her landholding,

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in excess of six hundred [600] hectares if owned by corporations: Provided, further, That land where justified agrarian unrest exists may be expropriated regardless of its area.

[122] Rep. Act No. 3844, Sec. 4 provides:

Section 4. Abolition of Agricultural Share Tenancy. — Agricultural share tenancy, as herein defined, is hereby declared to be contrary to public policy and shall be abolished: Provided, That existing share tenancy contracts may continue in force and effect in any region or locality, to be governed in the meantime by the pertinent provisions of Republic Act Numbered Eleven hundred and ninety-nine, as amended, until the end of the agricultural year when the National Land Reform Council proclaims that all the government machineries and agencies in that region or locality relating to leasehold envisioned in this Code are operating, unless such contracts provide for a shorter period or the tenant sooner exercises his option to elect the leasehold system: Provided, further, That in order not to jeopardize international commitments, lands devoted to crops covered by marketing allotments shall be made the subject of a separate proclamation that adequate provisions, such as the organization of cooperatives, marketing agreements, or other similar workable arrangements, have been made to insure efficient management on all matters requiring synchronization of the agricultural with the processing phases of such crops: Provided, furthermore, That where the agricultural share tenancy contract has ceased to be operative by virtue of this Code, or where such a tenancy contract has been entered into in violation of the provisions of this Code and is, therefore, null and void, and the tenant continues in possession of the land for cultivation, there shall be presumed to exist a leasehold relationship under the provisions of this Code, without prejudice to the right of the landowner and the former tenant to enter into any other lawful contract in relation to the land formerly under tenancy contract, as long as in the interim the security of tenure of the former tenant under Republic Act Numbered Eleven hundred and ninety-nine, as amended, and as provided in this Code, is not impaired: Provided, finally, That if a lawful leasehold tenancy contract was entered into prior to the effectivity of this Code, the rights and obligations arising therefrom shall continue to subsist until modified by the parties in accordance with the provisions of this Code.

while another person cultivated it[123] until the leasehold relation was extinguished.[124] The landowner had the right to collect lease rental from the agricultural lessee,[125] while the lessee had the right to a homelot[126] and to be indemnified for his or her labor if the property was surrendered to the landowner or if the lessee was ejected from the landholding.[127]

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[123] Rep. Act No. 3844, Sec. 6 provides:

Section 6. Parties to Agricultural Leasehold Relation. — The agricultural leasehold relation shall be limited to the person who furnishes the landholding, either as owner, civil law lessee, usufructuary, or legal possessor, and the person who personally cultivates the same.

[124] Rep. Act No. 3844, Sec. 7 provides:

Section 7. Tenure of Agricultural Leasehold Relation. — The agricultural leasehold relation once established shall confer upon the agricultural lessee the right to continue working on the landholding until such leasehold relation is extinguished. The agricultural lessee shall be entitled to security of tenure on his landholding and cannot be ejected therefrom unless authorized by the Court for causes herein provided.

[125] Rep. Act No. 3844, Sec. 26(6) provides:

Section 26. Obligations of the Lessee. — It shall be the obligation of the agricultural lessee:

. . . . . .

(6) To pay the lease rental to the agricultural lessor when it falls due.

[126] Rep. Act No. 3844, Sec. 24 provides:

Section 24. Right to a Home Lot. — The agricultural lessee shall have the right to continue in the exclusive possession and enjoyment of any home lot he may have occupied upon the effectivity of this Code, which shall be considered as included in the leasehold.

[127] Rep. Act No. 3844, Sec. 25 provides:

Section 25. Right to be Indemnified for Labor. — The agricultural lessee shall have the right to be indemnified for the cost and expenses incurred in the cultivation, planting or harvesting and other expenses incidental to the improvement of his crop in case he surrenders or abandons his landholding for just cause or is ejected therefrom. In addition, he has the right to be indemnified for one-half of the necessary and useful improvements made by him on the landholding: Provided, That these improvements are tangible and have not yet lost their utility at the time of surrender and/or abandonment of the landholding, at which time their value shall be determined for the purpose of the indemnity for improvements.

Republic Act No. 3844 also sought to provide economic family-sized farms to landless citizens of the Philippines especially to qualified farmers.[128] The landowners were allowed to retain as much as 75 hectares of their landholdings. Those lands in excess of 75 hectares could be expropriated by the government.[129]

The system finally transitioned from agricultural leasehold to one of full ownership under President Ferdinand E. Marcos (1965-1986). On September 10, 1971, Congress enacted Republic Act No. 6389 or the Code of Agrarian Reform.

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[128] Rep. Act No. 3844, Sec. 51(6) provides:

Section 51. Powers and Functions. — It shall be the responsibility of the Authority:

. . . . . .

(6) To give economic family-size farms to landless citizens of the Philippines who need, deserve, and are capable of cultivating the land personally, through organized resettlement, under the terms and conditions the Authority may prescribe, giving priority to qualified and deserving farmers in the province where such lands are located[.]

[129] Rep. Act No. 3844, Sec. 51(1)(c) provides:

Section 51(1)(c). SECTION 51. Powers and Functions. — It shall be the responsibility of the Authority:

(1) To initiate and prosecute expropriation proceedings for the acquisition of private agricultural lands as defined in Section one hundred sixty-six of Chapter XI of this Code for the purpose of subdivision into economic family-size farm units and resale of said farm units to bona fide tenants, occupants and qualified farmers: Provided, That the powers herein granted shall apply only to private agricultural lands subject to the terms and conditions and order of priority hereinbelow specified:

. . . . . .

c. [I]n expropriating private agricultural lands declared by the National Land Reform Council or by the Land Authority within a land reform district to be necessary for the implementation of the provisions of this Code, the following order of priority shall be observed:

1. idle or abandoned lands;

2. those whose area exceeds 1,024 hectares;

3. those whose area exceeds 500 hectares but is not more than 1,024 hectares;

4. those whose area exceeds 144 hectares but is not more than 500 hectares; and

5. those whose area exceeds 75 hectares but is not more than 144 hectares.

Republic Act No. 6389 automatically converted share tenancy into agricultural leasehold.[130] It also established the Department of Agrarian Reform as the implementing agency for the government's agrarian reform program.[131] Presidential Decree No. 2 proclaimed the whole country as a land reform area.[132]

On October 21, 1972, Presidential Decree No. 27, or the Tenants Emancipation Decree, superseded Republic Act No. 3844. Seeking to "emancipat[e] the tiller of the soil from his

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[130] Rep. Act No. 6389, Sec. 1 provides:

Section 1. Sections 1, 2, 3 and 4 of Republic Act No. thirty eight hundred and forty-four, otherwise known as the Agricultural Land Reform Code, are hereby amended to read as follows:

. . . . . .

"Section 3. Composition of Code. — In pursuance of the policy enunciated in Section two, the following are established under this Code:

"(1) An agricultural leasehold system to replace all existing share tenancy systems in agriculture[.]"

[131] Rep. Act No. 6389, Sec. 9 provides:

Section 9. The Titles of Chapter III and Article 1 and Section 49 and 50 of the same Code are hereby amended to read as follows:

"Chapter III. — Department of Agrarian Reform.
"Article I. — Organization and Functions of the Department of Agrarian Reform.
"Sec. 49. Creation of the Department of Agrarian Reform. — For the purpose of carrying out the policy of establishing owner-cultivatorship and the economic family size farm as the basis of Philippine agriculture and other policies enunciated in this Code, there is hereby created a Department of Agrarian Reform, hereinafter referred to as Department, which shall be directly under the control and supervision of the President of the Philippines. It shall have authority and responsibility for implementing the policies of the state on agrarian reforms as provided in this Code and such other existing laws as are pertinent thereto.
"The Department shall be headed by a Secretary who shall be appointed by the President with the consent of the Commission on Appointments.
"He shall be assisted by one Undersecretary who shall be appointed by the President with the consent of the Commission on Appointments."

[132] Proclaiming the Entire Country as a Land Reform Area (1972).

bondage,"[133] Presidential Decree No. 27 mandated the compulsory acquisition of private lands to be distributed to tenant-farmers. From 75 hectares under Republic Act No. 3844, Presidential Decree No. 27 reduced the landowner's retention area to a maximum of seven (7) hectares of land.

Presidential Decree No. 27 implemented the Operation Land Transfer Program to cover tenanted rice or corn lands. According to *Daez v. Court of Appeals*,[134] "the requisites for coverage under the [Operation Land Transfer] program are the following: (1) the land must be devoted to rice or corn crops; and (2) there must be a system of share-crop or lease-tenancy obtaining therein."[135]

Therefore, the land for acquisition and distribution must be planted with rice or corn and must be tenanted under a share tenancy or an agricultural leasehold agreement.[136] The landowner would not enjoy the right to retain land if his or her entire landholding was intact and undisturbed.[137]

On the other hand, if a land was subjected to compulsory land reform under the Operation Land Transfer program, the landowner, who cultivated this land, or intended to cultivate an area of the tenanted rice or corn land, had the right to retain an area of not more than seven (7) hectares.[138]

On October 21, 1976, Letter of Instruction No. 474 further amended the rule. If the landowner owned an aggregate area of more than seven (7) hectares of *other* agricultural lands, he

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[133] Pres. Decree No. 27 (1972) or Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor.

[134] 382 Phil. 742 (2000) [Per J. De Leon, Jr., First Division].

[135] *Id.* at 751.

[136] *Id.*

[137] *Id.*

[138] *Heirs of Sandueta v. Robles*, 721 Phil. 883, 893 (2013) [Per J. Perlas-Bernabe, Second Division].

or she could no longer exercise any right of retention. Letter of Instruction No. 474 states:

> 1. You shall undertake to place under the Land Transfer Program of the government pursuant to Presidential Decree No. 27, all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families.

Heirs of Aurelio Reyes v. Garilao[139] affirmed that the landowner's retention right was restricted by the conditions set forth in Letter of Instruction No. 474.[140] In *Heirs of Sandueta v. Robles*,[141] this Court denied the landowner's application for retention as it fell under the first disqualifying condition of Letter of Instruction No. 474: the landowner's total area was 14.0910 hectares, twice the seven (7)-hectare limit for retention.[142]

In *Vales v. Galinato*:[143]

> [B]y virtue of [Letter of Instruction No.] 474, if the landowner, as of October 21, 1976, owned less than 24 [hectares] of tenanted rice or corn lands, but additionally owned (*a*) other agricultural lands of more than 7 [hectares], whether tenanted or not, whether cultivated or not, and regardless of the income derived therefrom, or (*b*) lands used for residential, commercial, industrial or other urban purposes, from which he [or she] derives adequate income to support himself [or herself] and his [or her] family, his [or her] entire landholdings shall be similarly placed under [Operation Land Transfer] Program coverage, without any right of retention.[144]

Following the People Power Revolution, then President Corazon C. Aquino (1986-1992) fulfilled the promise of land

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[139] 620 Phil. 303 (2009) [Per *J*. Peralta, Third Division].

[140] *Id*. at 322-323.

[141] 721 Phil. 883 (2013) [Per *J*. Perlas-Bernabe, Second Division].

[142] *Id*. at 893-894.

[143] 728 Phil. 432 (2014) [Per *J*. Perlas-Bernabe, Second Division].

[144] *Id*. at 444.

ownership for the tenant-farmers. Proclamation No. 131 instituted the Comprehensive Agrarian Reform Program. Executive Order No. 129 (1987) reorganized the Department of Agrarian Reform and expanded it in power and operation. Executive Order No. 228 (1987) declared the full ownership of the land to qualified farmer beneficiaries under Presidential Decree No. 27.

Likewise, the 1987 Constitution, which was promulgated during President Corazon C. Aquino's term, enshrines the promotion of rural development and agrarian reform.[145] To balance the interests of landowners and tenants, Article XIII, Section 4 of the Constitution also recognizes the landowner's retention right, as may be prescribed by law:

> Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, *subject to such priorities and reasonable retention limits as the Congress may prescribe*, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing. (Emphasis supplied)

On June 10, 1988, Congress enacted Republic Act No. 6657,[146] otherwise known as the Comprehensive Agrarian Reform Law, to supersede Presidential Decree No. 27.

The compulsory land acquisition scheme under Republic Act No. 6657 empowers the government to acquire private agricultural lands[147] for distribution to tenant-

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[145] Const., Art. II, Sec. 2.

[146] An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for its Implementation, and for Other Purposes (1988).

[147] Private agricultural lands are lands already titled in the name of private individuals. These also include agricultural lands which have a Torrens title, free-patent titles and those with homestead patents.

farmers.[148] A qualified farmer beneficiary is given an emancipation patent,[149] called the Certificate of Land Ownership Award,[150] which serves as conclusive proof of his or her ownership of the land.[151]

To mitigate the effects of compulsory land acquisition,[152] Section 6 of Republic Act No. 6657 allows the landowners the right to retain up to five (5) hectares of land covered by the Comprehensive Agrarian Reform Program, thus:

See FAQs on CARP. Available at <http://www.dar.gov.ph/downloads/category/82-FAQs?download=838:FAQs%20on%20CARP>. (Last visited April 24, 2017).

[148] Rep. Act No. 6657, Sec. 4 provides:

Section 4. Scope. — The Comprehensive Agrarian Reform Law of 1988 shall cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands, as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture.

More specifically, the following lands are covered by the Comprehensive Agrarian Reform Program:

(a) All alienable and disposable lands of the public domain devoted to or suitable for agriculture. No reclassification of forest or mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain.
(b) All lands of the public domain in excess of the specific limits as determined by Congress in the preceding paragraph; cda
(c) All other lands owned by the Government devoted to or suitable for agriculture; and
(d) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.

[149] See Adm. Order No. 2 (1994).

[150] FAQs on CARP. Available at <http://www.dar.gov.ph/downloads/category/82-FAQs?download=838:FAQs%20on%20CARP>. (Last visited April 24, 2017).

[151] FAQs on CARP. Available at <http://www.dar.gov.ph/downloads/category/82-FAQs?download=838:FAQs%20on%20CARP>. (Last visited April 24, 2017).

[152] *Holy Trinity Realty & Development Corp. v. Dela Cruz*, G.R. No. 200454, October 22, 2014 [Per *J.* Bersamin, First Division].

Section 6. *Retention Limits.* —

. . . . . .

The right to choose the area to be retained, which shall be compact or contiguous, shall pertain to the landowner: *Provided, however,* That in case the area selected for retention by the landowner is tenanted, the tenant shall have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features...

On July 14, 1989, this Court promulgated *Association of Small Land Owners in the Philippines v. Secretary of Agrarian Reform*,[153] acknowledging that the landowner, whose property was subject to compulsory land reform, might opt to retain land under Section 6 of Republic Act No. 6657.

On August 30, 2000, pursuant to Presidential Decree No. 27, Section 6 of Republic Act No. 6657 and this Court's ruling in *Association of Small Land Owners in the Philippines*, the Department of Agrarian Reform issued Administrative Order No. 05-00 to provide implementing rules on the landowner's retention right.[154]

Section 9(a) of Administrative Order No. 05-00 states that the retention limit for landowners covered by Presidential Decree No. 27 is "seven (7) hectares, except those whose entire tenanted rice and corn lands are subject of acquisition and distribution under [Operation Land Transfer]." Section 9(a) further states that a landowner may not exercise his or her retention right under the following conditions:

1. If [the landowner], as of 21 October 1972, owned more than twenty- four (24) hectares of tenanted rice and corn lands; or

2. By virtue of Letter of Instruction (LOI) No. 474, if [the landowner], as of 21 October 1972, owned less than twenty-

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[153] 256 Phil. 777 (1989) [Per *J.* Cruz, *En Banc*].

[154] Revised Rules and Procedures for the Exercise of Retention Right by Landowners (2000).

four (24) hectares of tenanted rice and corn lands but additionally owned the following:

i. other agricultural lands of more than seven (7) hectares, whether tenanted or not, whether cultivated or not, and regardless of the income derived therefrom; or

ii. lands used for residential, commercial, industrial or other urban purposes from which he derives adequate income to support himself [or herself] and his [or her] family.

On January 16, 2003, the Department of Agrarian Reform issued Administrative Order No. 02-03 to further clarify the rules governing the landowner's retention right.[155]

Section 4.1 of Administrative Order No. 02-03 gives the landowner the option to exercise the right of retention at any time before he or she receives a notice of Comprehensive Agrarian Reform Program coverage.[156]

The right to choose the area to be retained belongs to the landowner, subject to the condition that the area must be (a) a "private agricultural land"[157] that is (b) compact and contiguous, and (c) "least prejudicial to the entire landholding and the majority of the farmers" of that land.[158]

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[155] DAR Adm. Order No. 02-03 (2000).

[156] DAR Adm. Order No. 02-03, Sec. 4.1 provides:

Section 4. Period to Exercise Right of Retention Under RA 6657

4.1. The landowner may exercise his right of retention at any time before receipt of notice of coverage.

[157] DAR Adm. Order No. 02-03, Sec. 7.1 provides:

Section 7. Criteria/Requirements for Award of Retention – The following are the criteria in the grant of retention area to landowners:

7.1. The land is private agricultural land[.]

[158] DAR Adm. Order No. 02-03, Sec. 2.1 provides:

Section 2. Statement of Policies – The exercise of retention right by landowners shall be governed by the following policies:

2.1. The landowner has the right to choose the area to be retained by him which shall be compact and contiguous, and which shall be least prejudicial to the entire landholding and the majority of the farmers therein.

Landowners who voluntarily sold or transferred their land must have exercised the right of retention simultaneous with the offer for sale or transfer.[159] If the land was compulsorily acquired by the government, the right of retention must have been exercised "within sixty (60) days from receipt of notice of coverage."[160]

Section 7 of Administrative Order No. 02-03 provides that the landowner seeking to exercise his or her retention right must submit an affidavit stating "the aggregate area of his [or her] landholding in the entire Philippines" and "the names of all farmers . . . actual tillers or occupants, and/or other persons directly working on the land," thus:

SECTION 7. *Criteria/Requirements for Award of Retention* — The following are the criteria in the grant of retention area to landowners:

> 7.1. The land is private agricultural land;
>
> 7.2. The area chosen for retention shall be compact and contiguous and shall be least prejudicial to the entire landholding and the majority of the farmers therein;
>
> 7.3. The landowner must execute an affidavit as to the aggregate area of his landholding in the entire Philippines; and

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[159] DAR Adm. Order No. 02-03, Sec. 4.3 provides:

Section 4. Period to Exercise Right of Retention Under RA 665

. . . . . .

4.3. Under the Voluntary Offer to Sell (VOS) and the Voluntary Land Transfer (VLT)/Direct Payment Scheme (DPS), the landowner shall exercise his right of retention simultaneously at the time of offer for sale or transfer.

[160] DAR Adm. Order No. 02-03, Sec. 4.2 provides:

Section 4. Period to Exercise Right of Retention Under RA 6657

. . . . . .

4.2. Under the Compulsory Acquisition (CA) Scheme, the landowner shall exercise his right of retention within sixty (60) days from receipt of notice of coverage.

> 7.4. The landowner must submit a list of his children who are fifteen (15) years old or over as of 15 June 1988 and who have been actually cultivating or directly managing the farm since 15 June 1988 for identification as preferred beneficiaries, as well as evidence of such.
>
> 7.5. The landowner must execute an affidavit stating the names of all farmers, agricultural lessees and share tenants, regular farmworkers, seasonal farmworkers, other farmworkers, actual tillers or occupants, and/or other persons directly working on the land; if there are no such persons, a sworn statement attesting to such fact.

If the area selected by the landowner for retention is tenanted, "the tenant shall have the option to choose whether to remain ... as lessee or be a beneficiary in the same or another agricultural land with similar or comparable features." Section 9 of Administrative Order 02-03 states that the tenant must exercise this option within one (1) year from the time the landowner manifests his or her choice of the area for retention, as follows:

> SECTION 9. *When Retained Area is tenanted*
>
> 9.1. In case the area selected by the landowner or awarded for retention by the [Department of Agrarian Reform] is tenanted, the tenant shall have the option to choose whether to remain therein as lessee or be a beneficiary in the same or another agricultural land with similar or comparable features.
>
> . . . . . .
>
> 9.3. The tenant must exercise his option within one (1) year from the time the landowner manifests his choice of the area for retention, or from the time the [Municipal Agrarian Reform Office] has chosen the area to be retained by the landowner, or from the time an order is issued granting the retention.

If the landowner fails to manifest an intention to exercise the right to retain within 60 calendar days after receiving the Comprehensive Agrarian Reform Program coverage, he or she is considered to have waived the right of retention as explained in Section 2.2 of Administrative Order No. 02-03:

> 2.2. The landowner shall exercise the right to retain by signifying his intention to retain within sixty (60) days from receipt of notice

of coverage. Failure to do so within the period shall constitute a waiver of the right to retain any area.

On August 7, 2009, Republic Act No. 9700 or the Comprehensive Agrarian Reform Program Extension with Reforms was enacted to strengthen the comprehensive agrarian reform program and to extend the acquisition and distribution of all agricultural lands.

The rules on the retention right have remained the same.

The Court of Appeals properly exercised its jurisdiction in finding that "Leonilo P. Nuñez, Sr." was different from "Leonilo Sebastian Nuñez." Contrary to petitioners' allegations,[161] the Court of Appeals could not be estopped simply because the issue was never raised before the Department of Agrarian Reform. In the exercise of its appellate jurisdiction, the Court of Appeals is empowered to have an independent finding of fact or adopt those set forth in the decision appealed from.[162] This is true especially when the factual finding on the matter contradicts the evidence on record.

Asian Terminals, Inc. v. Simon Enterprises, Inc.[163] has held that even this Court, which generally reviews questions of law, may review questions of facts when the judgment is based on a misapprehension of facts.[164] This Court may likewise do so

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[161] *Rollo*, pp. 62-65.

[162] RULES OF COURT, Rule 51, Secs. 4 and 5 provide:

Section 4. Disposition of a case.– The Court of Appeals, in the exercise of its appellate jurisdiction, may affirm, reverse, or modify the judgment or final order appealed from, and may direct a new trial or further proceedings to be had.

Section 5. Form of decision. — Every decision or final resolution of the court in appealed cases shall clearly and distinctly state the findings of fact and the conclusions of law on which it is based, which may be contained in the decision or final resolution itself, or adopted from those set forth in the decision, order, or resolution appealed from.

[163] 705 Phil. 83 (2013) [Per *J.* Villarama, First Division].

[164] *Id.* at 92.

when there is no citation of specific evidence on which the factual findings are based or when the relevant and undisputed facts have been manifestly overlooked which, if properly considered, would justify a different conclusion.[165] This gives all the more reason for the Court of Appeals to review questions of facts and law. In *Garcia v. Ferro Chemicals, Inc.*,[166] this Court has also held that a matter not raised by the parties may be reviewed if "necessary for a complete resolution of the case."[167]

II

This Court cannot apply *Nuñez v. GSIS Family Bank* in petitioners' favor or to respondents' prejudice.

First, neither Villanoza nor his heirs were impleaded in that case. Villanoza and his heirs were non-parties to the mortgage and did not participate in the proceedings for foreclosure and annulment of foreclosure of mortgage. No person can be affected by any proceeding to which he or she is a stranger. Being complete strangers in that case, respondents are not bound by the judgment rendered by this Court.

Second, the Court of Appeals properly found that petitioners did not furnish timely and sufficient evidence to prove that "Leonilo P. Nuñez, Sr." was also "Leonilo Sebastian Nuñez."

The new pieces of evidence that petitioners attached are inadmissible. *Cansino v. Court of Appeals*[168] has held that "a motion for reconsideration cannot be used as a vehicle to introduce new evidence."[169] The belated introduction of these documents in a motion for reconsideration before the Court of Appeals violates respondents' right to contest the new evidence presented.[170]

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[165] *Id*.

[166] 744 Phil. 590 (2014) [Per *J*. Leonen, Second Division].

[167] *Id*. at 603.

[168] 456 Phil. 686 (2003) [Per *J*. Puno, Third Division].

[169] *Id*. at 688.

[170] *Id*. at 692.

Moreover, the Certificate of Baptism and Teofila's Affidavit are "mere photocopies."[171] Petitioners failed to present the original or certified true copies of these documents. Rule 130, Section 3 of the Rules of Court states that "[w]hen the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself[.]"

The due execution and authenticity of the baptismal certificate, being a private document,[172] were also not established. Under Section 20 of Rule 132 of the Rules of Court:

> Section 20. Proof of private document. — Before any private document offered as authentic is received in evidence, *its due execution and authenticity must be proved* either:
>
> a. By anyone who saw the document executed or written; or
> b. By evidence of the genuineness of the signature or handwriting of the maker.
>
> Any other private document need only be identified as that which it is claimed to be. (Emphasis supplied)

Petitioners did not comply Rule 132, Section 20 of the Rules of Court. Likewise, the photocopy of Teofila's Affidavit may not be considered an ancient document under Rule 132, Section 21 of the Rules of Court as follows:

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[171] *Rollo*, p. 103.

[172] RULES OF COURT, Rule 132, Sec. 19 provides:

> Section 19. Classes of Documents. — For the purpose of their presentation evidence, documents are either public or private.
>
> Public documents are:
>
> (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
> (b) Documents acknowledge before a notary public except last wills and testaments; and
> (c) Public records, kept in the Philippines, of private documents required by law to the entered therein.
>
> All other writings are private.

Section 21. When evidence of authenticity of private document not necessary. — Where a private document is more than thirty years old, is produced from the custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its authenticity need be given.

A copy purporting to be an ancient document may be admitted in evidence if it bears a certification from the proper government office where the document is naturally found genuine that the document is the exact copy of the original on file.[173] Here, the photocopied Affidavit of Teofila does not carry such certification from the notary public or the Register of Notaries Public, among others.[174] Petitioners have not shown that the Affidavit of Teofila is free from suspicion and unblemished by alterations.

Even assuming that "Leonilo P. Nuñez, Sr." is also "Leonilo Sebastian," the Court of Appeals correctly ruled that petitioners' non-execution of this Court's Decision in *Nuñez v. GSIS Family Bank* constituted an abandonment of their rights. The Court of Appeals considered this Court's judgment in that case, which was never executed for almost 10 years,[175] a hollow victory. According to the Court of Appeals, "if [petitioners] truly believe that said decision will entitle them to get back the subject property,"[176] then they had every reason to have quickly taken steps to enforce the judgment in their favor.

The Office of the President ruled similarly, thus:

Clear from the records . . . is the fact that [petitioners] are not the owners of the subject property when the same was placed under the

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[173] *Lacsa v. Court of Appeals*, 274 Phil. 506, 515 (1991) [Per *J*. Padilla, Second Division].

[174] The notary public submits his or her notarial register to the Executive Judge of the court in which one is commissioned. The judge keeps a copy of this, while the Office of the Court Administrator has an updated and complete database of such records. See A.M. No. 02-8-13-SC, Rule III, Sec. 12.

[175] *Rollo*, p. 147.

[176] *Id*. at 97.

Comprehensive Agrarian Reform Program (CARP) of the government through the Department of Agrarian Reform. The existence of a Court decision finding them to be the rightful owner[s] without the decision having been executed . . . renders the decision inutile and becomes an empty victory for the prevailing part[ies].[177] (Citations omitted)

Cormero v. Court of Appeals[178] has established that the failure to assert one's right for an unreasonable amount of time leads to the presumption that he or she has abandoned this right. The Court of Appeals properly held that petitioners were barred by *laches* for failing to protect their rights for at least nine (9) years, which was an "unreasonable length of time."[179]

In their defense, petitioners aver that they sought for the execution of *Nuñez v. GSIS Family Bank*, only that the sheriff did not implement it.[180] However, they did not show any evidence to prove their claim. "Bare allegations, unsubstantiated by evidence, are not equivalent to proof."[181] The one alleging a fact has the burden of proving it.[182]

III

Finally, assuming that Sebastian could properly exercise his retention right, this could not cover the land awarded to Villanoza.

Petitioners cite *Santiago, et al. v. Ortiz-Luiz*[183] to claim that an emancipation grant cannot "defeat the right of the heirs of the deceased landowner to retain the [land]."[184] However, in that case, this Court denied the landowner's retention right for

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[177] *Id*. at 147.

[178] 317 Phil. 348 (1995) [Per *J*. Francisco, Second Division].

[179] *Rollo*, p. 104.

[180] *Id*. at 70-71.

[181] *Real v. Belo*, 542 Phil. 109, 122 (2007) [Per *J*. Austria-Martinez].

[182] *Luxuria Homes, Inc. v. Court of Appeals*, 361 Phil. 989, 1000 (1999) [Per *J*. Martinez, First Division].

[183] 645 Phil. 230 (2010) [Per *J*. Carpio Morales, Third Division].

[184] *Rollo*, p. 44.

exceeding what the law provides.[185] There is no cogent reason why this Court should rule differently in this case.

Section 6 of Republic Act No. 6657[186] gives the landowner the option to choose the area to be retained only if it is compact or contiguous. The Department of Agrarian Reform, the Office of the President, and the Court of Appeals have consistently found that the land subject of the dispute is neither compact nor contiguous.

Section 6 also provides that if the area selected for retention is tenanted, it is for the tenant to choose whether to remain in the area or be a beneficiary in the same or a comparable agricultural land.[187] Petitioners' Application for Retention stated that Villanoza occupied the property as a tenant and farmer beneficiary.[188] Thus, the option to remain in the same land was for Villanoza to make.

The landowner's retention right is subject to another condition. Under Section 3.3 of Administrative Order No. 02-03, the heirs of a deceased landowner may exercise the retention right only if the landowner signified his or her intention to exercise the right of retention before August 23, 1990.[189] Section 3.3 states:

> 3.3. The right of retention of a deceased landowner may be exercised by his heirs provided that the heirs must first show proof that the decedent landowner had manifested during his lifetime his intention to exercise his right of retention prior to 23 August 1990 (finality of the Supreme Court ruling in the case of Association of Small Landowners in the

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[185] *Santiago v. Ortiz-Luis*, 645 Phil. 230, 243 (2010) [Per *J.* Carpio Morales, Third Division].

[186] See also DAR Adm. Order No. 2, Sec. 2.1.

[187] Rep. Act No. 6657, Sec. 6.

[188] *Rollo*, p. 156. Villanoza's name was misspelled as "Gavino T. Villanoza."

[189] Date of finality in the Supreme Court ruling in *Association of Small Landowners in the Philippines Inc. v. Honorable Secretary of Agrarian Reform*.

Philippines Incorporated versus the Honorable Secretary of Agrarian Reform).

Petitioners cannot claim the right of retention through "Leonilo Sebastian" or "Leonilo P. Nuñez, Sr." when the alleged predecessor-in-interest himself failed to do so. The Court of Appeals correctly ruled that during his lifetime, Sebastian did nothing to signify his intent to retain the property being tilled by Villanoza. It was only two (2) years after his death that petitioners started to take interest over it.[190]

Neither was any right of retention exercised within 60 days from the notice of Comprehensive Agrarian Reform Program coverage. The Court of Appeals properly considered this as a waiver of the right of retention,[191] pursuant to Section 6.1 of Administrative Order No. 02-03.

Section 6.1 provides that the landowner's "[f]ailure to manifest an intention to exercise his right to retain within sixty (60) calendar days from receipt of notice of CARP coverage" is a ground for losing his or her right of retention.

The Department of Agrarian Reform sent a notice of Comprehensive Agrarian Reform Program coverage to GSIS Family Bank, which was then landowner of the disputed property.[192] Neither GSIS Family Bank nor Sebastian exercised any right of retention within 60 days from this notice of coverage.

In *Vda. De Dayao v. Heirs of Robles*,[193] this Court has held that the Department of Agrarian Reform "has no authority to decree a retention when no application was in the first place ever filed."[194]

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[190] *Rollo*, p. 24.

[191] *Id.* at 23.

[192] *Id.* at 61.

[193] 612 Phil. 137 (2009) [Per *J.* Quisumbing, Second Division].

[194] *Id.* at 146.

Petitioners themselves admit that the Department of Agrarian Reform sent a notice of coverage to GSIS Family Bank.[195] During this time, no application was ever filed by GSIS Family Bank or petitioners. The same land, which the Republic of the Philippines subsequently acquired, was awarded to Villanoza.

While all agrarian reform programs have always accommodated some forms of retention for the landowner, all rights of retention have always been subject to conditions. Unfortunately in this case, the landowner has miserably failed to invoke his right at the right time and in the right moment. The farmer beneficiary should not, in equity, be made to suffer the landowner's negligence.

Finally, the issuance of the title to Villanoza could no longer be revoked or set aside by Secretary Pangandaman.[196] Acquiring the lot in good faith, Villanoza registered his Certificate of Land Ownership Award title under the Torrens system.[197] He was issued a new and regular title, TCT No. NT-299755, in fee simple;[198] that is to say, it is an absolute title, without qualification or restriction.

Estribillo v. Department of Agrarian Reform[199] has held that "certificates of title issued in administrative proceedings are

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[195] *Rollo*, p. 61.

[196] Presidential Decree No. 1529, Section 32. Review of decree of registration; Innocent purchaser for value. The decree of registration shall not be reopened or ... subject, however, to the right of any person. . .deprived of land. . .by such. . .confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration. . .

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. . .

[197] *Rollo*, p. 26.

[198] *Id*.

[199] 526 Phil. 700 (2006) [Per *J*. Chico-Nazario, First Division].

as indefeasible as [those] issued in judicial proceedings."[200] Section 2 of Administrative Order No. 03-09 provides that "[t]he State recognizes the indefeasibility of [Certificate of Land Ownership Awards], [Emancipation Patents] and other titles issued under any agrarian reform program."

Here, a Certificate of Land Ownership Award title was already issued and registered in Villanoza's favor on December 7, 2007.[201] Villanoza's Certificate of Land Ownership Award was titled under the Torrens system on November 24, 2004.[202] After the expiration of one (1) year, the certificate of title covering the property became irrevocable and indefeasible. Secretary Pangandaman's August 8, 2007 Order, which came almost three (3) years later, was thus ineffective.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals' Decision dated September 26, 2014 and Resolution dated June 4, 2015 in CA-G.R. SP No. 130544, which affirmed the Office of the President's Decision dated August 11, 2011 and reinstated the Department of Agrarian Reform Regional Director's Order dated February 23, 2005, are **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Mendoza*, and *Martires, JJ.*, concur.

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[200] *Id.* at 717.

[201] *Id.* at 333-334.

[202] *Rollo*, p. 346.

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against a woman or her child. (*Id*.)

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Appeals of criminal cases — In appeals of criminal cases before the Supreme Court, the authority to represent the State is vested solely in the Solicitor General; when sustained. (Bumatay *vs*. Bumatay, G.R. No. 191320, April 25, 2017) p. 302

Petition for review on certiorari to the Supreme Court under Rule 45 — A petition for review filed under Rule 45 may raise only questions of law; at present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse

guaranty of security of tenure, as the employers and employees are permitted to fix the applicable retirement age at 60 years or below, provided the employees' retirement benefits under any collective bargaining agreement and other agreements shall not be less than those provided in the Labor Code. (*Id*.)

— The retirement age is primarily determined by the existing agreement or employment contract, and in the absence thereof, the retirement age is fixed by law, which provides for a compulsory retirement age at 65 years, while the minimum age for optional retirement is set at 60 years. (*Id*.)

— While an employer may unilaterally retire an employee earlier than the legally permissible ages under the Labor Code, this prerogative must be exercised pursuant to a mutually instituted early retirement plan. (*Id*.)

LAND REGISTRATION

Torrens system — Certificate of title prevails as an absolute and indefeasible evidence of ownership of the property against tax declarations. (Sps. Alcantara *vs*. Sps. Florante Belenand Zenaida Ananias, G.R. No. 200204, April 25, 2017) p. 399

LAND TITLES

Lands within the Baguio Townsite Reservation— While P.D. No. 1271 provides for a means to validate ownership over lands forming part of the Baguio Townsite Reservation, it requires, among others, that a Certificate of Title be issued on such lands on or before July 31, 1973; the subject lands should be properly classified as lands of the public domain as well. (Bilag *vs.* Ay-ay, G.R. No. 189950, April 24, 2017) p. 236

LEGISLATIVE DEPARTMENT

Legislative power — It is within the province of the Congress to treat price discounts either as tax deduction or as tax credit. (Southern Luzon Drug Corp. *vs.* Dept. of Social Welfare and Dev't., G.R. No. 199669, April 25, 2017) p. 315

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