



Republic of the Philippines
Supreme Court
 Baguio City
 EN BANC

SUPREME COURT OF THE PHILIPPINES
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KNIGHTS OF RIZAL,
 Petitioner,

G.R. No. 213948

Present:

SERENO, C.J.,
 CARPIO,
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 MENDOZA,
 REYES,
 PERLAS-BERNABE,
 LEONEN,
 JARDELEZA,
 CAGUIOA,
 MARTIRES, and
 TIJAM, JJ.

- versus -

**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.

Promulgated:

April 25, 2017

X-----*[Signature]*-----X

DECISION

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 Others¹

¹ Rollo, Vol. 1, pp. 3-28.



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.

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-

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.

⁵ Id. at 301.

⁶ Id. at 376.

⁷ *Rollo*, Vol. III, pp. 1371-1373.

⁸ Id. at 1374.

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 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 letter¹⁰ dated 6 November 2012 from NHCP Chairperson Dr. Maria Serena I. Diokno addressed to DMCI-PDI and the letter¹¹ 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 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.

⁹ Id. at 1375-1376.

¹⁰ *Rollo*, Vol. I, pp. 404-405.

¹¹ *Rollo*, Vol. III, p. 1377.

¹² Id. at 1381-1383.

¹³ Id. at 1384-1385.

¹⁴ Id. at 1386-1387.

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 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

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.

¹⁹ Id. at 4.

²⁰ Id. at 13.

²¹ Id. at 16.

²² Id. at 17.

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

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

First, DMCI-PDI asserts that the Court has no original jurisdiction over actions for injunction.²⁹ Even assuming that the Court has concurrent

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.

²⁵ *Id.* at 19.

²⁶ *Id.* at 20.

²⁷ *Id.* at 21.

²⁸ *Id.* at 307.

²⁹ *Id.* at 308.

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 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

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.

³⁶ Id. at 321.

³⁷ Id. at 329.

³⁸ Id.

³⁹ Id. at 338.

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

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 of sight of the Rizal

⁴⁰ Id. at 336.

⁴¹ Id. at 337.

⁴² Id. at 339.

⁴³ Id. at 346.

⁴⁴ Id. at 346-347.

⁴⁵ Id. at 434.

⁴⁶ Id.

⁴⁷ Id. at 433.

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.

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

⁴⁸ Id. at 434.

⁴⁹ Id. at 436.

⁵⁰ *Rollo*, Vol. III, p. 1363.

⁵¹ Id.

⁵² Id. at 1365.

⁵³ 60 Phil. 658, 661 (1934).

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 1306⁵⁵ 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 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

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;

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 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.

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.

⁶¹ Section 1, Article III, Constitution.

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 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.

The KOR also invokes this Court’s exercise of its extraordinary *certiorari* power of review under Section 1, Article VIII⁶⁵ of the

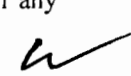
⁶² TSN, 1 September 2015, p. 34.

⁶³ *Rolló*, Vol. III, p. 1376.

⁶⁴ 120 Phil. 321, 337 (1964).

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.



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 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

⁶⁶ G.R. No. 207132, 6 December 2016.



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-A⁶⁷

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

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

4

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."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 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.

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 Condominium located at TAFT AVENUE, ERMITA x x x.

X X X X

⁶⁸ *Liang 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.

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.

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 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


⁷¹ 34 Phil. 818, 823 (1916).

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 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.

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



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

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."

⁷⁵ TSN, 25 August 2015, pp. 18-22, 24.

6

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 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. 1427⁷⁶ – 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.

Surely, as noble as the KOR's intentions were, its proposed center would have dwarfed the Rizal Monument with its size and proximity.

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.

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 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

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.

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.

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 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 not a trier of facts. It cannot

⁹⁰ Id.

⁹¹ *Rollo*, Vol. I, p. 371.

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.

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 injury¹⁰² 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 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

¹⁰² See *Garcia, Jr. v. Court of Appeals*, 604 Phil. 677 (2009).

¹⁰³ 131 Phil. 719, 725 (1968).

¹⁰⁴ *Zamora v. Wright*, 53 Phil. 613, 629 (1929).

¹⁰⁵ *Sanson v. Barrios*, 63 Phil. 198, 201 (1936).

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
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

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%BAultimo_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).

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%BAultimo_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).

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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, 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.


ANTONIO T. CARPIO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice

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).

Concurring Opinion
PRESBITERO J. VELASCO, JR.
Associate Justice

I join the dissent of Justice Justice
Teresito Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

I join the dissent of
J. Jardelega
Diosdado M. Peralta
DIOSDADO M. PERALTA
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Mariano C. Del Castillo
MARIANO C. DEL CASTILLO
Associate Justice

I join separate opinion of V. Jardelega
JOSE CATRAL MENDOZA
Associate Justice

Bienvenido L. Reyes
BIENVENIDO L. REYES
Associate Justice

Please see Separate Concurring Opinion
M. Perlal-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

I concur. see separate opinion
Marvic M.V.F. Leonen
MARVIC M.V.F. LEONEN
Associate Justice

Please see dissenting opinion of Jardelega
FRANCIS H. JARDELEZA
Associate Justice

I join the dissent of
J. Jardelega
Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

I join the dissent of J. Jardelega
Samuel R. Martires
SAMUEL R. MARTIRES
Associate Justice

Noel G. Tijam
NOEL G. TIJAM
Associate Justice

Please see separate Concurring opinion

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:



FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT