G.R. No. 213948 – KNIGHTS OF RIZAL, *Petitioner*, v. 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

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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 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:

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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-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.

> 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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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]

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**.

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4 *Special People, Inc. Foundation v. Canda*, 701 Phil. 365, 369 (2013); underscoring supplied.

5 *Carolino 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 *Carolino v. Senga*, supra note 5, at 70-71; emphases and underscoring supplied.

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 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.

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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 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 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. 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.

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**

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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.

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.
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> x x x x
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> 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.

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.
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> 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

[17] See Dissenting Opinion of Justice Francis H. Jardeleza.

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.

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. (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

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 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.
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> The following shall guide the development of historic sites and facilities:
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> 1. Sites with historic buildings or places shall be developed to conserve and enhance their heritage values.
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> 2. **Historic sites and facilities shall be adaptively re-used.**
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> 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**

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18 See *Carolino v. Senga*, supra note 5, at 70; emphases and underscoring supplied.

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.)

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.

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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.

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 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.

ESTELA M. PERLAS-BERNABE
Associate Justice

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CLERK OF COURT, EN BANC
SUPREME COURT

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[25] See *Special People, Inc. Foundation v. Canda*, supra note 4, at 386.
[26] *Carolino v. Senga*, supra note 5, at 70.