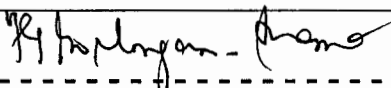


EN BANC

G.R. No. 213948 – KNIGHTS OF RIZAL *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

Promulgated:

April 25, 2017



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CONCURRING OPINION

TIJAM, J.:

On 12 September 2014, the Knights of Rizal filed a petition for injunction directly with the Supreme Court to halt the construction of the Torre de Manila and have it demolished. Petitioner averred that once finished, said structure would completely dominate the vista of the Rizal Park and substantially diminish in scale and importance our national hero's monument. It asserted that the project is a nuisance *per se*, constructed in bad faith and in violation of the City of Manila's zoning ordinance.

Private respondent, however, argued that there is absolutely no law, ordinance or rule prohibiting the construction of a building, regardless of height, at the background of the Rizal Park and Rizal Monument, and that Republic Act No. 10066 (National Cultural Heritage Act of 2009) protects merely the physical integrity of national cultural treasures. It denied acting in bad faith and that the Torre de Manila is a nuisance *per se*.

On 25 November 2014, the Supreme Court resolved to treat the petition as one for *mandamus*, and to implead the City of Manila, the National Historical Commission of the Philippines, the National Museum and the National Commission on Culture and the Arts as public respondents.

For the reasons hereinafter set forth, I concur in the result reached by my distinguished colleague, J. Carpio, in his *ponencia*.

No clear legal right for mandamus to issue.

Mandamus is a command issuing from a court of law of competent



jurisdiction, in the name of the state or the sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law.¹ *Mandamus* will lie if the tribunal, corporation, board, officer, or person unlawfully neglects the performance of said duty.²

It is, thus, essential to the issuance of a writ of *mandamus* that the applicant should have a **clear, certain and well-defined legal right** to the thing demanded, and it must be the **clear and imperative duty** of the respondent to perform the act required.³

Accordingly, for *mandamus* to issue in this case, it must be shown that petitioner has a well-defined legal right to judicially demand, and public respondents or any of them has the concomitant legal duty to carry out, the preservation of the vista, sightline and setting of the Rizal Park and the Rizal Monument.

Petitioner anchored its petition on Sections 15 and 16, Article XIV⁴ of the 1987 Constitution which read:

Section 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation's historical and cultural heritage and resources, as well as its artistic creations.

Section 16. All the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State which may regulate its disposition.

The foregoing constitutional provisions mandate the conservation, promotion and protection of historical and cultural heritage and resources, but do not specify a clear legal right to the protection of the vista, sightline and setting thereof.

Broadly written, the provisions use the words "conserve," "promote," "popularize" and "protect" which are open to different interpretations, as demonstrated no less by the parties' conflicting positions on their breadth and scope when applied to the construction of the Torre de Manila. The provisions further refer to but do not define what constitutes the nation's "historical and cultural heritage and resources," "artistic creations," and "artistic and historic wealth." The authority given to the State to regulate the disposition of the country's artistic and historic wealth also indicates that

¹ *Star Special Watchman and Detective Agency, Inc., et al. v. Puerto Pinesa City, et al.*, G.R. No. 181792, April 21, 2014, citing *Uy Kiao Eng vs. Nixon Lee*, G.R. No. 176831, January 15, 2010.

² *Ibid.*

³ *Villanueva v. Judicial and Bar Council*, G.R. No. 211833, April 7, 2015. *Ongsuco v. Malones*, G.R. No. 182065, October 27, 2009

⁴ On Education, Science and Technology, Arts, Culture and Sports.



further government action is intended to enforce the constitutional policy of conserving and protecting our heritage resources.

Legislation is, thus, necessary to supply the norms and standards and define the parameters for the implementation of the constitutional protection of historical and cultural heritage and resources.

In this regard, J. Florentino P. Feliciano's separate concurring opinion⁵ in the landmark case of *Oposa v. Factoran, Jr.*⁶ is illuminating:

It seems to me important that the legal right which is an essential component of a cause of action be a **specific, operable legal right**, rather than a constitutional or statutory *policy*, for at least two (2) reasons. One is that unless the legal right claimed to have been violated or disregarded is given specification in operational terms, defendants may well be unable to defend themselves intelligently and effectively; in other words, there are **due process** dimensions to this matter.

The second is a broader-gauge consideration — where a specific violation of law or applicable regulation is not alleged or proved, petitioners can be expected to fall back on the expanded conception of judicial power in the second paragraph of Section 1 of Article VIII of the Constitution which reads:

Section 1. . . .

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a *grave abuse of discretion* amounting to lack or excess of jurisdiction *on the part of any branch or instrumentality of the Government*. (Emphasis supplied)

When substantive standards as general as “the right to a balanced and healthy ecology” and “the right to health” are combined with remedial standards as broad ranging as “a grave abuse of discretion amounting to lack or excess of jurisdiction,” the result will be, it is respectfully submitted, to **propel courts into the uncharted ocean of social and economic policy making**. At least in respect of the vast area of environmental protection and management, our courts have no claim to special technical competence and experience and professional qualification. **Where no specific, operable norms and standards are shown to exist, then the policy making departments — the legislative and executive departments — must be given a real and effective opportunity to fashion and promulgate those norms and standards, and to implement them before the courts should intervene.** (*Emphasis supplied.*)

⁵ Subsequently applied in *Pamatong v. COMELEC*, G.R. No. 161872, April 13, 2004.
⁶ G.R. No. 101083, July 30, 1993.

Similarly, in his Separate Opinion⁷ in *Agabon v. National Labor Relations Commission*,⁸ J. Dante O. Tinga explained why “the right to security of tenure, while recognized in the Constitution, cannot be implemented uniformly absent a law prescribing concrete standards for its enforcement,” thus:

x x x However, to declare that the constitutional provisions are enough to guarantee the full exercise of the rights embodied therein, and the realization of ideals therein expressed, would be impractical, if not unrealistic. The espousal of such view presents the **dangerous tendency of being overbroad and exaggerated**. The guarantees of “full protection to labor” and “security of tenure”, when examined in isolation, are facially unqualified, and the broadest interpretation possible suggests a blanket shield in favor of labor against any form of removal regardless of circumstance. This interpretation implies an unimpeachable right to continued employment - a utopian notion, doubtless - but still hardly within the contemplation of the framers. **Subsequent legislation is still needed to define the parameters of these guaranteed rights** to ensure the protection and promotion, not only the rights of the labor sector, but of the employers' as well. Without specific and pertinent legislation, **judicial bodies will be at a loss, formulating their own conclusion to approximate at least the aims of the Constitution**.

Thus, the constitutional mandate expressed in Sections 15 and 16, Article XIV of the Constitution cannot, on its own, be the source of the avowed right to the preservation of the vista, sightline and setting of the Rizal Park and Rizal Monument.⁹

The ensuing question, therefore, is whether legislation enacted pursuant to said mandate provide for specific and operable norms and standards that extend the constitutional protection to the vista, sightline and setting of historical and cultural heritage and resources. An examination of Philippine statutes relating to heritage preservation reveals no such norms or standards.

Republic Act No. (RA) 10066, known as the National Cultural Heritage Act of 2009, involves the protection of the *physical integrity* of the heritage property or site. This is evident from Sections 25 and 48 of the Act.

Section 25 of RA 10066 authorizes the appropriate cultural agency to issue a Cease and Desist Order *ex parte* “when the *physical integrity* of the national cultural treasures or important cultural properties are found to be in danger of destruction or significant alteration from its original state.”¹⁰

⁷ Subsequently applied in *Tondo Medical Center Employees Association, et al. v. Court of Appeals, et al.*, G.R. No. 167324, July 17, 2007.

⁸ G.R. No. 158693, November 17, 2004.

⁹ See Separate Opinion of J. Dante O. Tinga in *Agabon v. NLRC*; Id.

¹⁰ **Section 25. Power to Issue a Cease and Desist Order.** - When the physical integrity of the national cultural treasures or important cultural properties are found to be in danger of destruction or significant alteration from its original state, the appropriate cultural agency shall immediately issue a Cease

Furthermore, Section 48 of RA 100066, which enumerates the prohibited acts under the law, provides:

Section 48. Prohibited Acts. - To the extent that the offense is not punishable by a higher punishment under another provision of law, violations of this Act may be made by whoever intentionally:

(a) Destroys, demolishes, mutilates or damages any world heritage site, national cultural treasures, important cultural property and archaeological and anthropological sites;

(b) Modifies, alters, or destroys the **original features** of or undertakes construction or real estate development in any national shrine, monument, landmark and other historic edifices and structures, declared, classified, and marked by the National Historical Institute as such, without the prior written permission from the Commission. This includes the designated security or buffer zone, extending five (5) meters from the visible perimeter of the monument or site;


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Demolition, destruction and mutilation are acts applied upon something physical rather than non-physical such as the view, dominance, vista or sightline of a heritage site or property. Furthermore, the prohibited acts referred to in paragraph (b) applies to the *original features* of the monument or shrine itself or any real estate development *therein*. It will likewise be noted that the security or buffer zone protected under the provision extends only to *five (5) meters* from the visible perimeter of the monument or site. Records show that the Torre de Manila is located about 870 meters outside and to the rear of Rizal Park.

RA 10086 (Strengthening Peoples' Nationalism Through Philippine History Act) empowers the National Historical Commission of the Philippines (NHCP) to "(d)etermine the manner of identification, maintenance, restoration, conservation and preservation of historical sites, shrines, structures and monuments," and to (r)egulate activities pertaining to the preservation, restoration and conservation of historical property or resources."¹¹ The law, however, does not indicate specific and operable norms and standards for the protection of the vista, sightline or setting of historic monuments and sites.

and Desist Order *ex parte* suspending all activities that will affect the cultural property. The local government unit which has the jurisdiction over the site where the immovable cultural property is located shall report the same to the appropriate cultural agency immediately upon discovery and shall promptly adopt measures to secure the integrity of such immovable cultural property. Thereafter, the appropriate cultural agency shall give notice to the owner or occupant of the cultural property and conduct a hearing on the propriety of the issuance of the Cease and Desist Order. The suspension of the activities shall be lifted only upon the written authority of the appropriate cultural agency after due notice and hearing involving the interested parties and stakeholders.

¹¹ Section 7, RA 10086. 

Invoked by petitioner, the NHCP's Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and other Personages (Guidelines) provide that monuments should be given due prominence since they symbolize national significance.¹² As a measure to achieve the monument's dominance, the Guidelines state that vista points and visual corridors to monuments should be kept clear for unobstructed viewing appreciation and photographic opportunities.¹³ Citing the International Charter for the Conservation and Restoration of Monuments and Sites (Venice Charter), the Guidelines further declare that the conservation of a monument implies preserving a setting which is not out of scale, defining "setting" as not only limited to the exact area directly occupied by the monument, but also to surrounding areas whether open space or occupied by other structures as may be defined by the traditional or juridical expanse of the property.¹⁴

However, as noted by my esteemed colleagues, J. Leonen and J. Jardeleza, it has not been shown that these Guidelines had been published and a copy thereof deposited with the Office of the National Administrative Register in the University of the Philippines' Law Center. Thus, they cannot be considered effective and binding.¹⁵ Both the requirements of publication and filing of administrative issuances intended to enforce existing laws are mandatory for the effectivity of said issuances.¹⁶ These requirements of publication and filing were put in place as safeguards against abuses on the part of lawmakers and as guarantees to the constitutional right to due process and to information on matters of public concern and, therefore, require strict compliance.¹⁷

In any event, the language of the NHCP Guidelines do not appear to rule out the presence or construction of buildings within the sightline or setting of the historic monument. Thus, the Guidelines provide that: "(t)he monument should *preferably* be the focal point of a city or town center," and the *(f)açade of buildings* around a monument, particularly on a rotunda or circle *can be retrofitted* with a *uniform design* to enhance the *urban renewal* of the site and the prominence and dominance of the monument."¹⁸ Furthermore, the Guidelines allow for *urban renewal projects* and *adaptation* of historic sites to *contemporary life*.¹⁹ It also looks to

¹² Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and other Personages, *Supra* Note. 1.

¹³ *Supra* Note. 2.


¹⁴ *Ibid.*

¹⁵ Sections 3, 4 and 5, Chapter 2 of Book VII of the Administrative Code; *Quezon City PTCA Federation, Inc. v. Department of Education*, G.R. No. 188720, February 23, 2016; *Republic v. Pilipinas Shell Petroleum Corporation*, G.R. No. 173918, April 8, 2008.

¹⁶ *Republic v. Pilipinas Shell Petroleum Corporation*, *Id.*, citing *National Association of Electricity Consumers for Reforms v. Energy Regulatory Board*, G.R. No. 163935, February 2, 2006.

¹⁷ *Republic v. Pilipinas Shell Petroleum Corporation*, *Id.*

¹⁸ Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and other Personages, item no. 1.

¹⁹ *Supra* Note. 11. 

regulation by the local government of the *design, volume and height of buildings surrounding or in the immediate vicinity of the monument/site to enhance* the prominence, dominance and dignity of the monument.²⁰ Such local regulation was notably made to apply to development in the vicinity, both “existing and *future*.”²¹ In relation to the monument’s setting, the Guidelines also state that *new* construction would not be allowed but only if it would alter the relations of mass and color.²² What it specifically rejects is the encroachment or “direct abutment of structures” into the monument site.²³

Thus, assuming the Guidelines are effective, they may not be deemed to impose an absolute prohibition against structures erected within the monument’s vicinity, sightline or setting, subject only to the structures’ compliance with the local government’s regulatory restrictions on height, design and volume, and to urban renewal standards.

RA 8492 (National Museum Act of 1998), which tasked the National Museum to supervise the restoration, preservation, reconstruction, demolition, alteration, relocation and remodeling of immovable properties and archaeological landmarks and sites,²⁴ contains no indication that such duty extended to the preservation of the vista, sightline and setting of cultural properties. RA 8492 was also amended by RA 10066 which distributed the responsibilities over cultural properties among several cultural agencies based on the categorization of the property, and assigned to the National Museum the responsibility for significant movable and immovable cultural and natural property *pertaining to collections of fine arts, archaeology, anthropology, botany, geology, zoology and astronomy*, including its conservation aspect.²⁵

RA 7356 or the Law Creating the National Commission for the Culture and the Arts (NCCA) mandated the NCCA to “support and promote the establishment and preservation of cultural and historical monuments,

20 Supra Note. 1 and 11.

21 Item no. 11 of the Guidelines is captioned “Development of the Vicinity (Existing and Future)”.

22 Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and other

Personages, item no. 2.

23 Supra Note. 8.

24 Section 7, RA 8492.

25 Section 31 of RA 10066 provides that: (a)The Cultural Center of the Philippines shall be responsible for significant cultural property pertaining to the performing arts; (b)The National Archives of the Philippines shall be responsible for significant archival materials; (c)The National Library shall be responsible for rare and significant contemporary Philippine books, manuscripts such as, but not limited to, presidential papers, periodicals, newspapers, singly or in collection, and libraries and electronic records; (d)The National Historical Institute shall be responsible for significant movable and immovable cultural property that pertains to Philippine history, heroes and the conservation of historical artifacts; (e)The National Museum shall be responsible for significant movable and immovable cultural and natural property pertaining to collections of fine arts, archaeology, anthropology, botany, geology, zoology and astronomy, including its conservation aspect; and (f)The Komisyon sa Wikang Filipino shall be responsible for the dissemination development, and the promotion of the Filipino national language and the conservation of ethnic languages.

markers, names and sites,”²⁶ and empowered it to “regulate activities inimical to preservation/conservation of national cultural heritage/properties.” It designated the NCCA as the over-all policy-making and coordinating body that will harmonize the policies of national cultural agencies.²⁷ RA 7356 was amended by RA 10066 which, among others, expanded the authority and responsibility of the NCCA. As previously noted, RA 10066 refers to the protection of the *physical integrity* of the heritage property or site, and does not specify operable norms and standards indicating that the protection extends to its vista, sightline or setting.

The Venice Charter, also invoked by petitioner, provides:

Article 1.

The concept of a historic monument embraces not only the single architectural work but also the urban or rural setting in which is found the evidence of a particular civilization, a significant development or a historic event. This applies not only to great works of art but also to more modest works of the past which have acquired cultural significance with the passing of time.

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Article 6.

The conservation of a monument implies preserving a setting which is not out of scale. Wherever the traditional setting exists, it must be kept. No new construction, demolition or modification which would alter the relations of mass and colour must be allowed.

The Venice Charter indeed declares that preservation of the setting is integrated in conservation efforts involving historic monuments. However, as pointed out by J. Jardeleza, the Charter does not rise to the level of enforceable law absent any showing of the country’s commitment thereto.

In any event, it cannot be said that the Venice Charter provides specific, operable norms and standards, or sufficient parameters, to hold that the setting of the Rizal Monument, in particular, was not preserved by reason of the subject building. By its language, the Charter merely laid down basic and guiding “principles,” “with each country being responsible for *applying the plan within the framework of its own culture and traditions.*” Thus, even assuming that the Philippines committed to adhere to said principles, the Charter cannot, by itself, be the basis for the *mandamus* sought.

In fine, a clear legal right to the protection of the vista, sightline and setting of the Rizal Monument and the Rizal Park has not been established in legislation as an aspect of the constitutional policy to conserve, promote and

²⁶ Section 12(b)(3), RA 7356.

²⁷ Section 23(b), RA 7356.

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protect historical and cultural heritage and resources. It is settled that legislative failure to pursue state policies cannot give rise to a cause of action in the courts.²⁸

During the deliberations on this case, it was posited that while existing statutes show no clear and specific duty on the part of public respondents to regulate, much less, prohibit the construction of structures that obstruct the view, sightline or setting of the Rizal Monument, Manila's zoning ordinance (Ordinance No. 8119) imposes such duty on the City Government of Manila under the guidelines and standards prescribed in Sections 47 and 48 thereof.

Sections 47 and 48 of Ordinance No. 8119, in pertinent part, state:

Sec. 47. Historical Preservation and Conservation Standards. – Historical sites and facilities shall be conserved and preserved. x x

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. x x
3. Any person who proposes to add, to alter, or partially demolish a designated heritage property will require the approval of the City Planning and Development Office (CPDO) and shall be required to prepare a heritage impact statement that will demonstrate to the satisfaction of the CPDO that the proposal will not adversely impact the heritage significance of the property and shall submit plans for review by the CPDO in coordination with the National Historical Institute (NHI).
4. Any proposed alteration and/or re-use of designated heritage properties shall be evaluated based on criteria established by the heritage significance of the particular property or site.
5. x x
6. x x
7. Residential and commercial infill in heritage areas will be sensitive to the existing scale and pattern of those areas, which maintains the existing landscape and streetscape qualities of those areas, and which does not result in the loss of any heritage resources.
8. Development plans shall ensure that parking facilities (surface lots, residential garages, stand-alone parking garages and parking components as part of larger developments) are compatibly integrated into heritage areas, and/or are compatible with adjacent heritage resources.
9. Local utility companies (hydro-gas, telephone, cable) shall be required to place metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless telecommunication towers and other utility equipment and

²⁸ *Espina, et al. v. Zamora, et al.*, G.R. No. 143855, 21 September 2010.

devices in locations which do not detract from the visual character of heritage resources, and which do not have negative impact on its architectural integrity.

10. Design review approval shall be secured from the CPDO for any alteration of heritage property to ensure that design guidelines and standards are met and shall promote preservation and conservation of the heritage property.
(*Underscoring supplied.*)

Sec. 48. Site Performance Standards. The City considers it in the public interest that all projects are designed and developed in a safe, efficient and aesthetically pleasing manner. Site development shall consider the environmental character and limitations of the site and its adjacent properties. All project elements shall be in complete harmony according to good design principles and the subsequent development must be pleasing as well as efficiently functioning especially in relation to the adjacent properties and bordering streets.

The design, construction, operation and maintenance of every facility shall be in harmony with the existing and intended character of its neighborhood. It shall not change the essential character of the said area but will be a substantial improvement to the value of the properties in the neighborhood in particular and the community in general.

Furthermore, designs should consider the following:

1. Sites, buildings and facilities shall be designed and developed with regard to safety, efficiency and high standards of design. The natural environmental character of the site and its adjacent properties shall be considered in the site development of each building and facility.
2. The height and bulk of buildings and structures shall be so designed that it does not impair the entry of light and ventilation, cause the loss of privacy and/or create nuisances, hazards or inconveniences to adjacent developments.
3. x x
4. x x
5. x x
6. x x
7. x x
8. No large commercial signage or pylon, which will be detrimental to the skyline, shall be allowed.
9. Design guidelines, deeds of restriction, property management plans and other regulatory tools that will ensure high quality developments shall be required from developers of commercial subdivisions and condominiums. These shall be submitted to the City Planning and Development Office (CPDO) for review and approval. (*Underscoring supplied.*)

An examination of Section 47 of Ordinance No. 8119, however, will reveal that the guidelines set therein refer to *the historical site or the heritage area itself*, or to the physical integrity of the *designated heritage property*. Thus, Section 47 speaks of the conservation and enhancement of the heritage value of the historical site; it also refers to the alteration,

demolition and re-use of designated heritage properties, and development plans within the heritage area. In fact, it is expressly prefaced by a statement alluding to the enumeration as guidelines in the “development of *historic sites and facilities*.”

Records show that Torre de Manila is located in the University Cluster Zone, 870 meters outside and to the rear of Rizal Park. The zone is not a historical site, a heritage area, or a designated heritage property. Thus, Section 47 of Ordinance No. 8119 will not apply.

Section 48 of Ordinance No. 8119, which enumerates the “Site Performance Standards,” appears to apply to all development projects in the City of Manila. It requires that the development project should be “aesthetically pleasing” and “in harmony with the existing and intended character of its neighborhood,” and that it should consider the “natural environmental character of the site and its adjacent properties.”

The neighborhood within which the Torre de Manila is situated is the University Cluster Zone. Furthermore, the building is not adjacent to or adjoining the Rizal Park or the Rizal Monument. By the language of Section 48, the “adjacent properties” mentioned therein would refer to properties adjoining the Torre de Manila site within the University Cluster Zone, such that “harmony with the existing and intended character of the neighborhood” would be achieved. It is, thus, doubtful that Section 48 provides norms and standards intended to preserve the sightline or setting of the Rizal Monument.

It has been held that *mandamus* will not issue to enforce a right which is in substantial dispute or as to which a substantial doubt exists.²⁹

Even assuming that Ordinance No. 8119 extends protection to the vista, sightline or setting of a historical site or property, it does not specify the parameters by which the City Development and Planning Office (CDPO) shall determine compliance, thereby giving the CDPO wide discretion in ascertaining whether or not a project preserves the heritage site or area.

Under the guidelines and standards of Sections 47 and 48 of Ordinance No. 8119, development projects: should conserve and enhance the heritage value of the historic site; should not adversely impact the heritage significance of the heritage property; should not result in the loss of any heritage resources; should not detract from the visual character of heritage resources; and should be aesthetically pleasing.

There are no parameters, definitions or criteria to ascertain how heritage value is deemed to have been conserved and enhanced, what

²⁹ *Uy Kiao Eng v. Lee*, G.R. 176831, January 15, 2010.



adversely impacts the heritage significance of a property, what sufficiently detracts from the visual character of a heritage property, and what is aesthetically pleasing. The absence of such parameters creates considerable room for subjective interpretation and use of discretion that could amount to an undue delegation of legislative power.

Two tests determine the validity of delegation of legislative power: (1) the completeness test and (2) the sufficient standard test. Under the first test or the so-called completeness test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate, *the only thing he will have to do is to enforce it*. The second test or the sufficient standard test, mandates that there should be adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot.³⁰

By their language and provisions, Sections 47 and 48 of Ordinance No. 8119 fail to comply with the completeness test.

A writ of *mandamus* can be issued only when petitioner's legal right to the performance of a particular act which is sought to be compelled is **clear and complete**. A clear legal right is a right which is **indubitably granted by law** or is inferable as a matter of law.³¹ No clear and complete legal right to the protection of the vista, sightline and setting of the Rizal Park and Rizal Monument has been shown to exist.

The Court cannot, in the guise of interpretation, enlarge the scope of a statute or insert into a statute what the legislature omitted, whether intentionally or unintentionally.³² To read into an ordinance objects which were neither specifically mentioned nor enumerated would be to run afoul of the dictum that where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters.³³ Thus, in *Canet v. Mayor Decena*,³⁴ the Court explained:

Even on the assumption that there is in fact a legislative gap caused by such an omission, neither could the Court presume otherwise and supply the details thereof, because **a legislative lacuna cannot be filled by judicial fiat**. Indeed, **courts may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers**. An omission at the time of the enactment, whether careless or calculated, cannot be judicially supplied however after later wisdom may recommend the inclusion. **Courts are**

³⁰ *ABAKADA Guro Party List Officers/Members Samson S. Alcantara, et al. v. Purisima, et al.*, G.R. No. 166715, August 14, 2008; *Equi-Asia Placement, Inc. v. Department of Foreign Affairs, et al.*, G.R. No. 152214, September 19, 2006.

³¹ *Carolino v. Senga, et al.*, G.R. No. 189649, April 20, 2015.

³² *Bases Conversion and Development Authority v. Commission on Audit*, G.R. No. 178160, February 26, 2009.

³³ *Canet v. Mayor Decena*, G.R. No. 155344, January 20, 2004.

³⁴ *Supra*, note 32.

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not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention has been called to the omission.

Courts should not, by construction, revise even the most arbitrary and unfair action of the legislature, nor rewrite the law to conform with what they think should be the law. **Nor may they interpret into the law a requirement which the law does not prescribe.** Where a statute contains no limitations in its operation or scope, courts should not engraft any. And where a provision of law expressly limits its application to certain transactions, it cannot be extended to other transactions by interpretation.

To do any of such things would be to do violence to the language of the law and to invade the legislative sphere. (*Emphasis supplied.*)

In the absence of a clear legal right to the protection of the vista, sightline and setting of the Rizal Monument, and the concomitant legal duty to enforce such right, *mandamus* will not lie. The writ of *mandamus* will not issue to compel an official to do anything which is not his duty to do or which it is his duty not to do, or to give to the applicant anything to which he is not entitled by law.³⁵

Direct recourse to the Supreme Court was improper.


An important principle followed in the issuance of the writ of *mandamus* is that there should be **no plain, speedy and adequate remedy in the ordinary course of law** other than the remedy of *mandamus* being invoked. In other words, *mandamus* can be issued only in cases where the usual modes of procedure and forms of remedy are powerless to afford relief.³⁶

Petitioner brought this case to the Supreme Court, arguing that that the Torre de Manila was being constructed in violation of the zoning ordinance. Petitioner claims that the City of Manila violated the height restrictions under Ordinance No. 8119 when it granted private respondent a variance almost six (6) times the seven (7)-floor height limit in a University Cluster Zone. Petitioner notes that at 22.83% completion, or at the height of nineteen (19) floors, as of 20 August 2014, the structure already obstructs the vista of the Rizal Park and the Rizal Monument.

Section 77 of Ordinance No. 8119, however, expressly provides for a remedy in case of violation of its provisions; it allows for the filing of a verified complaint before the Manila Zoning Board of Assessment and Appeals for any violation of the Ordinance or of any clearance or permits issued pursuant thereto, including oppositions to applications for clearances, variance or exception.

³⁵ *Star Special Watchman and Detective Agency, Inc., et al. v. Puerto Pinesa City, et al.*, supra, citing *Uy Kiao Eng v. Nixon Lee*, supra, note 28.

³⁶ *Uy Kiao Eng v. Lee*, supra, note 28.



The general rule is that before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the courts' judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case.³⁷

An exception to said rule is when the issue raised is a purely legal question, well within the competence and the jurisdiction of the court and not the administrative agency.³⁸

It is clear, however, that factual issues are involved in this case. The calculation of the maximum allowable building height, the alleged violation of existing regulations under Ordinance No. 8119, and the existence or non-existence of the conditions³⁹ for approval of a variance by reason of non-conformity with the height restrictions, are questions of fact which the City of Manila could pass upon under Section 77 of Ordinance No. 8119.

Likewise, whether or not the Torre de Manila is a nuisance, and whether or not private respondent acted in good faith, are factual issues that should not have been raised at the first instance before this Court.


The Supreme Court is not a trier of facts and it is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. More so, this Court is not duty-bound to analyze and weigh evidence pertaining to factual issues which have not been subject of any proper proceedings below.⁴⁰

³⁷ *Ongsuco v. Malones*, supra note 3.

³⁸ *Ibid.*

³⁹ Under Section 60 of Ordinance No. 8119, variances by reason of non-conformity with the Percentage of Land Occupancy and Floor Area Ratio provisions (which determine the height restriction) may be allowed by the City Council upon recommendation of the Manila Zoning Board of Adjustment and Appeals, subject to the following qualifications: (1) conformity will cause undue hardship due to the physical conditions of the property (topography, shape, etc.) which are not self-created; (2) the proposed variance is the minimum deviation necessary to permit reasonable use of the property; (3) the variance will not alter the physical character of the district/zone where the property is located, and will not substantially or permanently injure the use of other properties therein; (4) the variance will not weaken the general purpose of the Ordinance and will not adversely affect public health, safety and welfare; and (5) the variance will be in harmony with the spirit of the Ordinance.

⁴⁰ *Hipolito v. Cinco*, G.R. No. 174143, November 28, 2011.



Any judicial intervention should have been sought at the first instance from the Regional Trial Court which has the authority to resolve constitutional issues,⁴¹ more so where questions of fact are involved.

A direct recourse to this Court is highly improper for it violates the established policy of strict observance of the judicial hierarchy of courts. While we have concurrent jurisdiction with the Regional Trial Courts and the Court of Appeals to issue the extraordinary writs, this concurrence is not to be taken as an unrestrained freedom of choice as to which court the application for the writ will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. This Court is a court of last resort and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution and immemorial tradition.⁴²

Mandamus cannot compel the performance of a discretionary act.

A key principle to be observed in dealing with petitions for *mandamus* is that such extraordinary remedy lies to compel the performance of duties that are **purely ministerial** in nature, not those that are discretionary. A purely ministerial act or duty is one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of its own judgment upon the propriety or impropriety of the act done. The duty is ministerial only when its discharge requires neither the exercise of official discretion or judgment.⁴³

In issuing permits to developers and in granting variances from height restrictions, the City of Manila exercises discretion and judgment upon a given set of facts. Such acts are not purely ministerial functions that can be compelled by *mandamus*.

Petitioner failed to comply with requisites for judicial review.

Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations. The following requisites must be complied with before this Court can take cognizance of the case: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing

⁴¹ *Planters Products, Inc. v. Fertiphil Corporation*, G.R. No. 166006, March 14, 2008. *Ongsuco v. Malones*, supra note 3.

⁴² *Anillo v. Commission on the Settlement of Land Problems, et al.* G.R. No. 157856, September 27, 2007; Section 4, Rule 65, Rules of Court.

⁴³ *Special People, Inc. v. Canda, et al.*, G.R. No. 160932, January 14, 2013.

to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.⁴⁴

Petitioner failed to show its legal standing to file the case.

This Court, in determining *locus standi*, has applied the “direct injury” test which requires that for a private individual to invoke the judicial power to determine the validity of an executive or legislative action, **he must show that he has sustained a direct injury as a result of that action. It is not sufficient that he has a general interest common to all members of the public.**⁴⁵

Accordingly, *locus standi* or legal standing has been defined as a **personal and substantial interest** in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.⁴⁶

Jurisprudence defines interest as “material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. By real interest is meant a **present substantial interest**, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest.”⁴⁷

By the foregoing standards, petitioner cannot be considered to have satisfied the “direct injury” test.

Petitioner alleged that it is a public, non-profit organization created under RA 646, and pursuant to its mandate, it conducts activities at the Rizal Park to commemorate Jose Rizal’s birth and martyrdom at least twice a year. Petitioner asserted that its legal mandate to celebrate Rizal’s life was violated on account of private respondent’s Torre de Manila project which continue to mar the previously unobstructed view of the Rizal Park. Such interest, however, cannot be said to be personal and substantial enough to infuse petitioner with the requisite *locus standi*. It certainly is not a present or immediate interest, as petitioner’s commemorative activities are not constantly conducted in the Rizal Park.

⁴⁴ *In Re Supreme Court Judicial Independence v. Judiciary Development Fund*, UDK-15143, January 21, 2015; *Biraogo v. The Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010.

⁴⁵ *In Re Supreme Court Judicial Independence v. Judiciary Development Fund*, UDK-15143 (Resolution), supra, note 43, citing *David, et al. v. Macapagal-Arroyo, et al.*, G.R. No. 171396, May 3, 2006.

⁴⁶ *Galicto v. Aquino, et al.*, G.R. No. 193978, February 28, 2012.

⁴⁷ Ibid.



The experience of looking at the vista of the Rizal Park and the Rizal Monument and finding it marred by the subject structure does not give rise to a substantial and personal injury that will give *locus standi* to petitioner to file this case. It is what can be considered as an incidental, if not a generalized, interest. Generalized interests, albeit accompanied by the assertion of a public right, do not establish *locus standi*.⁴⁸ Evidence of a direct and personal interest is key.⁴⁹

The rule on *locus standi* is not a plain procedural rule but a constitutional requirement derived from Section 1, Article VIII of the Constitution, which mandates courts of justice to settle *only* “actual controversies involving rights which are legally demandable and enforceable.”⁵⁰ This Court, in *Lozano v. Nograles*,⁵¹ explained:

x x x [C]ourts are neither free to decide *all* kinds of cases dumped into their laps nor are they free to open their doors to *all* parties or entities claiming a grievance. The rationale for this constitutional requirement of *locus standi* is by no means trifle. It is intended “to assure a vigorous adversary presentation of the case, and, perhaps more importantly to warrant the judiciary’s overruling the determination of a coordinate, democratically elected organ of government.” It thus goes to the very essence of representative democracies.

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A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.

Petitioner has likewise failed to justify an exemption from the *locus standi* rule on grounds of “transcendental importance.”

In *Galicto v. Aquino*,⁵² this Court held that “even if (it) could have exempted the case from the stringent *locus standi* requirement, such heroic effort would be futile because the transcendental issue could not be resolved any way, **due to procedural infirmities and shortcomings.**” The Court explained that giving due course to a petition saddled with such formal and procedural infirmities would be “an exercise in futility that does not merit

⁴⁸ *Southern Hemisphere Engagement Network, Inc., et al. v. Anti-Terrorism Council, et al.*, G.R. No. 178552, October 5, 2010.

⁴⁹ *Ibid.*

⁵⁰ *Lozano v. Nograles*, G.R. No. 187883, June 16, 2009.

⁵¹ G.R. No. 187883, June 16, 2009, citing the Dissent of then Associate Justice Reynato S. Puno in *Kilosbayan, Incorporated v. Guingona, Jr.*, G.R. No. 113375, 5 May 1994.

⁵² G.R. No. 193978, February 28, 2012, citing *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004.

the Court's liberality."⁵³

As hereinbefore discussed, it was error for petitioner to have filed this case directly before the Supreme Court, as other plain, speedy and adequate remedies were still available and the case indubitably involves questions of fact. Thus, the resolution of any transcendental issue in this case will be rendered futile by reason of these procedural infirmities. Furthermore, it could not escape this Court's attention that what petitioner filed before this Court was, in fact, a petition for injunction over which the Court does not exercise original jurisdiction.⁵⁴

While the Court has taken an increasingly liberal approach to the rule of *locus standi*, evolving from the stringent requirements of personal injury to the broader transcendental importance doctrine, such liberality is not to be abused.⁵⁵

Indeed, the "transcendental importance" doctrine cannot be loosely invoked or broadly applied, for as this Court previously explained:

In the final scheme, judicial review is effective largely because it is not available simply at the behest of a partisan faction, but is exercised only to remedy a particular, concrete injury. When warranted by the presence of indispensable minimums for judicial review, this Court shall not shun the duty to resolve the constitutional challenge that may confront it. (*Emphasis supplied.*)

Thus, this Court, in the recent case of *Roy v. Herbosa*,⁵⁶ held that an indiscriminate disregard of the requisites for this Court's judicial review, every time "transcendental or paramount importance or significance" is invoked would result in unacceptable corruption of the settled doctrine of *locus standi* as every worthy cause is an interest shared by the general public.

Petitioner has also failed to present a justiciable controversy.

An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. **There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.** The Court can decide the constitutionality of an act or treaty only when a proper case

⁵³ Ibid.

⁵⁴ Article VIII of the Constitution provides:

Sec. 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, *prohibition*, *mandamus*, *quo warranto*, and *habeas corpus*.

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⁵⁵ *Lozano v. Nograles*, supra, note 49.

⁵⁶ G.R. No. 207246, November 22, 2016.

between opposing parties is submitted for judicial determination.⁵⁷

The existence of an actual case or controversy, thus, presupposes the presence of legally enforceable rights. In this case, petitioner asserts that it has the right to stop the construction of the Torre de Manila on the strength of Sections 15 and 16, Article XIV of the Constitution, which requires the State to conserve and protect the nation's historical and cultural heritage and resources. Petitioner argues that heritage preservation includes the sightline and setting of the Rizal Park and Rizal Monument.

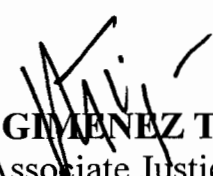
However, as hereinbefore shown, neither the Constitution nor existing legislation, including Manila's Ordinance No. 8119, provides for specific and operable norms and standards that give rise to a judicially enforceable right to the protection of the vista, sightline and setting of the Rizal Park and Rizal Monument.

Furthermore, related to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and **the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action. It must show that it has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.**⁵⁸

As previously discussed, petitioner has failed to show that it has sustained or is immediately in danger of sustaining a direct injury as a result of the construction of the Torre de Manila.

In sum, absent a clear legal right to the protection of the vista, sightline and setting of the Rizal Park and Rizal Monument, and for petitioner's failure to establish its legal standing and the existence of an actual controversy ripe for judicial adjudication, *mandamus* will not lie.

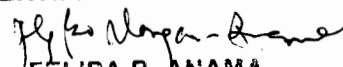
Accordingly, I vote to **DISMISS** the petition.


NOEL GIMENEZ TIJAM
Associate Justice

⁵⁷ *The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain, et al.*, G.R. No. 183591, October 14, 2008.

⁵⁸ *Ibid.*

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