

EN BANC

G.R. No. 213948 (*Knights of Rizal vs. DMCI Homes, Inc., DMCI Project Developers, Inc., City of Manila, National Commission for Culture and the Arts, National Museum and National Historical Commission of the Philippines*)

Promulgated:

April 25, 2017

x-----*[Signature]*-----x

CONCURRING OPINION

VELASCO, JR., J.:

I concur with the majority decision.

I

This case started out as a petition for injunction filed directly before us by the petitioner Knights of Rizal against the respondent DMCI Project Developers, Inc. (DMCI-PDI).¹ In it, petitioner primarily prayed for the following reliefs:²

1. The issuance of an order **enjoining the DMCI-PDI from continuing with the construction** of the *Torre de Manila* building; *and*
2. The issuance of an order directing the **demolition of so much of the said building already erected** by the DMCI-PDI.

Subsequently, however, we issued a resolution:³ (a) treating the instant case as a *mandamus* petition and (b) impleading—as public respondents herein—the City of Manila, the National Commission for Culture and the Arts (NCCA), the National Museum (NM) and the National Historical Commission of the Philippines (NHCP).

The conversion of the instant case to a *mandamus* petition and the addition of public respondents, to my mind, made clear what ought to be the central issue of the case: ***whether any or all of the respondents may be compelled to perform one or both acts sought to be enjoined in the original petition for injunction.*** The main inquiry, in other words, is whether any or all of the respondents may be compelled (1) to stop or prohibit the continued

¹ The petition was actually originally filed against respondent DMCI Homes, Inc. (DMCI-HI). However, DMCI-HI was substituted in the present suit by DMCI-PDI.

² See page 25 of the Petition for Injunction.

³ Dated November 25, 2014.

construction of the *Torre de Manila* building and/or (2) to demolish so much of the said building that already stands.

In order to answer the foregoing query, it is necessary to make a parallel determination on whether any of the respondents has the *legal duty* to perform one or both of the mentioned acts. It is rudimentary, after all, that a writ of *mandamus* will only lie to compel the performance of an act if such act is one “*which the law specifically enjoins as a duty resulting from an office, trust or station*”⁴ on the part of the respondent/s.

During the course of this case, various arguments were proffered in favor of the view that the respondents have the legal duties to stop or prohibit the continued construction of the *Torre de Manila* building and/or to demolish it in its present state. I find that these arguments may generally be subdivided into three (3) kinds.

The *first* argument is premised on the claim that the *Torre de Manila* building—visible as it is in the backdrop of the Rizal Monument to anyone facing such monument at or from a certain distance—had impaired the **view of dominance of the Rizal Monument in relation to its background** (view of dominance), which view is supposedly protected by the following laws and guidelines:

1. Sections 15 and 16, Article XIV of the Constitution,
2. Republic Act (RA) Nos. 4846, 7356 and 10066,
3. the Venice Charter, *and*
4. the 2012 NHCP Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages (NHCP Guidelines).


The theory of the first argument is that the illegal impairment of the view of dominance of the Rizal Monument gives rise to the duty of the respondents—particularly the DMCI-PDI (as the builder of the offending structure), as well as the NCCA, NM and NHCP (as the cultural agencies tasked by RA No. 10066 to protect the nation’s cultural properties)⁵—to perform the subject acts.

The *second* argument, on the other hand, rests on the notion that the construction of the *Torre de Manila* was carried out by DMCI-PDI in bad faith with the use of void permits, *viz*:

1. The zoning permit issued to DMCI-PDI for the construction of the *Torre de Manila* is void for exceeding the maximum

⁴ Section 3 of Rule 65 of the Rules of Court.

⁵ See Section VII of RA No. 10066.



number of floors allowed for buildings within the Institutional University Cluster per Section 17 of Ordinance No. 8119 of the City of Manila.

2. The building permit for the Torre de Manila is also void as a necessary consequence of the nullity of the zoning permit, pursuant to Section 69 of Ordinance No. 8119.
3. The variance granted to DMCI-PDI by the *Sangguniang Panglungsod* of the City of Manila, which exempted the Torre de Manila from the floor and height limits of Ordinance No. 8119, is also void due to it not being obtained in accordance with the procedure prescribed under Section 61 of the same ordinance.
4. All of the foregoing irregularities in its permits were known to DMCI-PDI yet it still pushed through with the construction of the *Torre de Manila*.

The theory of the second argument is that the nullity of the permits coupled by the bad faith of DMCI-PDI gives rise to the duty of the DMCI-PDI and of the City of Manila to perform the subject acts.

Lastly, the *third* argument is premised on the assumption that the *Torre de Manila* building constitutes as a nuisance for it apparently annoys or offends the senses of anyone viewing the Rizal Monument.

The theory of the third argument is that the character of the *Torre de Manila* building as a nuisance gives rise to the duty of DMCI-PDI and the City of Manila to cause the summary abatement of the said building.

II


In their decision, the majority confined themselves in addressing only the first argument.⁶ According to the majority, the second and third arguments actually pose factual questions that are more properly settled in the first instance, not by the Court, but by an appropriate office, administrative agency or trial court.⁷

As to the first argument, the majority essentially held that the view of dominance of the Rizal Monument is not afforded any legal protection under: (a) Sections 15 and 16 of Article XIV of the Constitution, (b) RA Nos. 4846, 7356 and 10066, (c) the Venice Charter or (d) the NHCP Guidelines. The majority elucidated thusly:⁸

⁶ See page 6 of the Decision.

⁷ See pages 6, 24-25 of the Decision.

⁸ See pages 10-14 of the Decision.



- a. Sections 15 and 16 of Article XIV of the Constitution are *not* self-executing provisions; both are mere expressions of general state policies and so, by themselves and without the aid of any enabling law, they cannot be the source of any enforceable right or claim of protection.
- b. Though RA Nos. 4846, 7356 and 10066 all implement to some extent the broad policies of Sections 15 and 16 of Article XIV of the Constitution, none of the said statutes provides any clear and definite protection to a view of dominance for any of the country's historical and cultural sites, let alone one for the Rizal Monument.
- c. The Venice Charter does not rise to the level of enforceable law. There is no showing that the Philippines has legally committed to observe such charter. Neither was it established that the principles contained therein are norms of general or customary international law. At any rate, the Venice Charter, by its own words, only seems to be hortatory.
- d. The NHCP Guidelines is neither law nor an enforceable regulation. It appears that it has never been published nor filed with the Law Center of the University of the Philippines. Moreover, like the Venice Charter, the NHCP Guidelines appears to be merely hortatory.


The inquiry of the majority, however, did not stop there.

According to the majority, even though no national law categorically guarantees a view of dominance to any of the nation's cultural properties, there exists a local Manila legislation that actually extends such a guarantee to at least the city's historical sites and facilities.⁹ To this end, they cited Sections 47 and 48 of Ordinance No. 8119 of the City of Manila. As the majority explained:¹⁰

1. Section 47 of Ordinance No. 8119 provides standards that aim to protect Manila's historical sites and facilities from impairment that may be caused by development projects. The protection afforded by Section 47 extends even to the *view* of the city's historical sites and facilities, as two of the standards therein make explicit reference to: (a) the maintenance of the "*landscape and streetscape*" qualities of such sites and facilities as well as (b) the preservation of the "*visual character*" of the same.

⁹ Page 17 of the Decision.

¹⁰ See pages 19-21 of the Decision.



2. Section 48 of Ordinance No. 8119, on the other hand, prescribes standards that aim to protect properties and neighborhoods that are adjacent to a proposed development project. Two standards therein make explicit reference to: (a) an obligation of property developers to consider, in the design of their projects, the “*natural environmental character*” of adjacent properties as well as (b) a prohibition against certain projects that could be detrimental to the “*skyline*.”

Be that as it may, the majority withheld themselves from determining: (a) whether the Rizal Monument and Park is a historical site or facility in contemplation of Ordinance No. 8119, (b) whether the abovementioned standards in Sections 47 and 48 apply to the DMCI-PDI and the *Torre de Manila* building and, if so, (c) whether DMCI-PDI, in erecting the said building, had breached or impaired any of such standards. They implicitly considered the City of Manila as the entity in the best position to make such determinations; pointing out that it was supposedly the latter’s duty do so, as, in fact, it should have already done so, prior to issuing permits to DMCI-PDI.

In this case, however, the majority found that the City of Manila had failed to consider the abovementioned standards in Sections 47 and 48 of Ordinance No. 8119 when it issued the permits for the construction of the *Torre de Manila* to DMCI-PDI.¹¹

And so, the majority saw it fit to make a ruling as follows:

WHEREFORE, let a writ of mandamus be issued in this case. Public respondent City of Manila, through its representatives, is directed to **RE-EVALUATE WITH DISPATCH** the permits issued in favor of DMCI-PDI’s *Torre de Manila* project, **DETERMINE APPLICABILITY AND/OR COMPLIANCE WITH** the standards under Section 47 and 48 of Ordinance No. 8119, and **GRANT THE APPROPRIATE RELIEFS/SANCTIONS** under the law. The TRO issued by this Court shall **REMAIN EFFECTIVE** until the issuance of the final decision in the re-evaluation proceeding to be conducted by the appropriate officials of the City of Manila.

SO ORDERED.

III

I agree with the majority in their disregard of the second and third arguments.

I also agree with their position that the Rizal Monument’s view of dominance is neither protected nor guaranteed by: (a) Sections 15 and 16 of Article XIV of the Constitution, (b) RA Nos. 4846, 7356 and 10066, (c) the Venice Charter or (d) the NHCP Guidelines.

¹¹ See page 23 of the Decision.

I disagree, however, with the majority's interpretation that the *view*—that is, the view of dominance—of Manila's historical sites and facilities are protected by Sections 47 and 48 of Ordinance No. 8119. A careful reading of both sections, in their proper contexts, easily disproves such interpretation.

Hence, I cannot but disagree with the majority's ruling compelling the City of Manila, through a writ of *mandamus*, to re-evaluate the permits of DMCI-PDI. Such a re-evaluation will serve no useful purpose given that none of the standards enumerated under Sections 47 and 48 of Ordinance No. 8119 can have any application to the present dispute.

I remain convinced that there is no law, whether national or local, that protects the view of dominance of the Rizal Monument. Verily, I am constrained to follow the only logical conclusion of that finding, *i.e.*, there is **no compellable duty on the part of any of the respondents to stop or prohibit the construction of the *Torre de Manila* building or to otherwise destroy so much of the said building already constructed.**

I vote, therefore, to dismiss the *mandamus* petition.

A. Sections 47 and 48 of Ordinance No. 8119 Do Not Protect View of Dominance of Rizal Monument

Contrary to the majority's finding, Sections 47 and 48 *do not* protect the view—particularly, the view of dominance—of Manila's historical sites and facilities.

View of Dominance

The view of dominance of a property, at least for purposes of the dispute at hand, refers to a characteristic of a property that permits it to be viewed as the *sole* or *most prominent* element *vis-à-vis* its background. This is the attribute of the Rizal Monument that was supposedly impaired by the construction of the *Torre de Manila*, per the proponents of the first argument.

An inviolable view of dominance is not an inherent attribute of any kind of property—not even of our monuments and national shrines.¹² To merit inviolability, there must be a law that guarantees and protects it.

A law that purports to protect the view of dominance of a particular property, such as a historical site or facility, must necessarily be a law that either ***prohibits*** the construction of buildings and other structures within a certain area *outside* of the premises of the site or facility or ***prescribes***

¹² Indeed, at least two (2) of the country's most revered monuments—the Bonifacio Monument in Caloocan City and the Ninoy Aquino Monument in Makati City—already stand in highly urbanized settings and completely surrounded by high buildings and/or billboards. See "*Examples of Monuments of Other Filipino National Heroes*," Memorandum of the NHCP.

specific limitations on any such construction. Without such express prohibition or limitation, there can be no effective assurance that the view of dominance of a historical site or facility would not be impaired.

The nature of a law protecting a view of dominance, therefore, is similar to one that establishes an easement; it imposes a burden (in this case, a building prohibition or restriction) upon certain properties so as to ensure that the prominent view of another property in relation to its background remains unimpaired.

Section 47 Does Not Prohibit or Regulate the Construction of Buildings and Other Structures Outside of the Premises of Manila's Historical Sites and Facilities; Its Standards Do Not Apply to DMCI-PDI and the Torre de Manila

Section 47 of Ordinance No. 8119, true enough, enumerates standards that aim to protect Manila's historical sites and facilities from impairment. Those standards, however, do not extend protection to the view of dominance of such sites and facilities.

A reading of Section 47 reveals that the standards enumerated thereunder only apply to construction projects involving the "*development of historic sites and facilities*" themselves, to wit:

SEC. 47. *Historical Preservation and Conservation Standards.* - Historic sites and facilities shall be conserved and preserved. These shall, to the extent possible, be made accessible for the educational and cultural enrichment of the general public.

The following shall guide the **development of historic sites and facilities**:

x x x x (emphasis supplied)

The clear import of the foregoing is that Section 47 only applies to development projects that are implemented *within* the historical sites or facilities. The section, in other words, has absolutely no application to projects that are constructed outside of such site or facility.

Since Section 47 does not regulate, much less prohibit, construction projects that surrounds the city's historical sites and facilities, it cannot be said that the said section provides any protection or guarantee to the view of dominance of such sites and facilities. The standards under Section 47 could not be invoked so as to prohibit a building—standing on private land and without the premises of a historical site or facility—from rising and becoming visible in the background of such site or facility.

Hence, even assuming that the Rizal Monument is a historical site or facility in contemplation of Ordinance No. 8119, it is manifest that none of the standards under Section 47—much less those pointed out by the majority—can conceivably apply to the case of the DMCI-PDI and the *Torre de Manila*. Indeed, a thorough look at some of those standards will quickly expose their inaptness:

First. Section 47(3) of the ordinance, which requires the submission of a heritage impact statement and of construction plans to the City Planning and Development Office and the NHCP for review, only applies to property developers who propose to “to add, to alter or partially demolish” a heritage property. This cannot apply to the DMCI-PDI because the *Torre de Manila* building is built on private property well outside the premises of the Rizal Monument and even of the Rizal Park, and does not add to, alter or partially demolish the said monument and park.

Second. Section 47(7) of the ordinance, which requires residential and commercial infill *in heritage areas* to maintain the existing “*landscape and streetscape*” qualities of such area, cannot apply to DMCI-PDI simply because the *Torre de Manila* does not stand on any such “*heritage area*.”

Apropos to this point is the uncontroverted fact that the *Torre de Manila* building stands on an area that has not been declared as an “*anthropological or archeological area*,” nor designated as a “*heritage zone, cultural property, historical landmark or a national treasure*” by the NHCP.¹³

Third. Section 47(9) of the ordinance, which requires power and communication equipment¹⁴ to be placed in locations that do not detract from the “*visual character*” of the heritage resources and which do not have negative impact on its architectural integrity, can never apply to DMCI-PDI because it is not a “*local utility company*” and its *Torre de Manila* project is not involved with the installation of any power and communication equipment in or within the Rizal Monument and Park.

Verily, none of the standards under Section 47 of Ordinance No. 8119 may be considered as protective of the view of dominance of any of Manila’s historical sites and facilities. Such standards are clearly meant to apply only to development projects *within* the historical sites or facilities themselves. None of them, consequently, can have any possible application to DMCI-PDI and the *Torre de Manila*.

Standards Under Section 48 Cited By the Majority Are Mere General Norms on Construction Projects That Do Not

¹³ Opinion of City Legal Officer of the City of Manila dated September 12, 2012, Annex E, Position Paper of the City of Manila.

¹⁴ That is, metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless communication towers and other utility equipment.

Guarantee the View of Dominance of Adjacent Properties

Section 48 of Ordinance No. 8119, on the other hand, enumerates standards that aim to protect the character, environmental limitation, convenience and safety of properties and neighborhoods that are adjacent to a construction project. The section, by its terms, is meant to have universal application, *i.e.*, its standards apply to all construction projects within the city (such as the *Torre de Manila*) and are intended to protect any kind of properties or neighborhoods adjacent thereto (such as the Rizal Monument).

Be that as it may, Section 48 does not prescribe any concrete building prohibition or restriction on construction projects that are specially geared towards the preservation of the view of dominance of properties or neighborhoods adjacent thereto. The standards under Section 48 that were invoked by the majority are mere **general** norms that, *per se*, are insufficient to guarantee such view. The said standards do not establish operable norms by themselves and so, to gain substance, should be read with other provisions of the ordinance or of other laws:

First. The second paragraph of Section 48, which requires every construction project to be “*in harmony with the existing and intended character of its neighborhoods,*” obviously has reference to the provisions of Ordinance No. 8119 that demarcates the different zoning areas of the City of Manila.¹⁵ This does not guarantee the view of dominance of neighborhoods adjacent to a construction project, but only requires the latter to adhere to the “*character*” of such neighborhoods as “*intended*” by the zoning regulations.

Second. Section 48(1), which requires construction projects to consider the “*natural environmental character*” of adjacent properties, has perceptible reference to the provisions of the National Building Code on sanitation¹⁶ as well as to our different environmental laws and regulations. This provision actually has no connection whatsoever with protecting the view of dominance of a property adjacent to a construction project.

Third. Section 48(7), which prohibits large commercial signages that are detrimental to the “*skyline,*” is an adjunct of Section 36 of Ordinance No. 8119 that, in turn, states that all “*advertising, business signs and billboards*” must comply with “*existing laws, rules and regulations.*”¹⁷ This is not a direct guarantee of the view of dominance of any property, but a general prohibition against certain kinds of signages. Moreover, for obvious reasons, this provision cannot apply to the *Torre de Manila*.

¹⁵ See Sections 7 and 8 of Ordinance No. 8119. See also Zoning Map, Annex B, Ordinance No. 8119.

¹⁶ Chapter IX of Presidential Decree (PD) No. 1096.

¹⁷ See Chapter XX of PD No. 1096.

Verily, none of the standards under Section 48 of Ordinance No. 8119 may be considered as protective of the view of dominance of any of property within the city, much less of the Rizal Monument.

B. Mandamus to Compel Re-evaluation Does Not Lie

The ruling of the majority compelling the City of Manila to re-evaluate the permits it issued to DMCI-PDI is premised on the claim that the former, in so issuing the said permits, overlooked certain standards under Sections 47 and 48 of Ordinance No. 8119 that supposedly protects the view of dominance of Manila's historical sites and facilities. The underlying purpose of the re-evaluation was to allow the City of Manila to determine, in essence, the following: (a) whether the Rizal Monument and Park is a historical site or facility in contemplation of Ordinance No. 8119, (b) whether the abovementioned standards in Sections 47 and 48 apply to the DMCI-PDI and the *Torre de Manila* building and, if so, (c) whether DMCI-PDI, in erecting the said building, had breached or impaired any of such standards.

My discussion in the immediately preceding segment, however, established that none of the standards under Sections 47 and 48 of Ordinance No. 8119 actually extends protection to the view of dominance of any property within Manila. It cannot be said, therefore, that the City of Manila had overlooked, misinterpreted or misapplied any pertinent standards when it issued the permits to DMCI-PDI. The need for a re-evaluation is thereby also negated as the possibility that the same would yield an outcome different from the original evaluation is but reduced to nil.

Hence, the directive compelling the City of Manila to re-evaluate the permits of DMCI-PDI must fail. A re-evaluation will only waste resources, further delay the final resolution of the case and defeat the very purpose why we took cognizance of the petition in the first place. The compulsion of such an act is certainly not the office of the writ of *mandamus*.

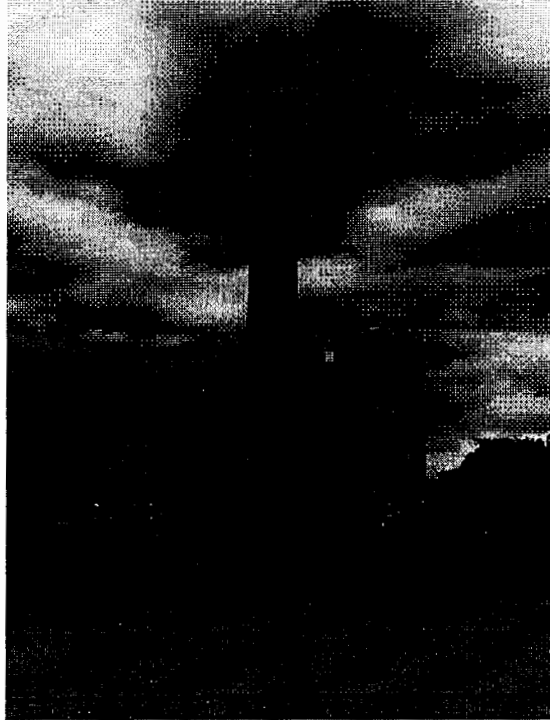
IV

This case has been pending with us for more than two (2) years. In that time I certainly had ample opportunity to scour our statute books for any pertinent law or regulation that could be considered as protective of the Rizal Monument's view of dominance. And scour I did. Yet, I found none.

The absence of law protecting the view of dominance of the Rizal Monument strips the first argument of any semblance it might have first had as a *bona fide* legal dispute. Without the backing of law, the only query the argument actually brings to the fore is whether the Rizal Monument is still pleasing to look at or to take picture of in light of the *Torre de Manila* looming in its background. To my mind, that is not a question that the Court may dabble into, much less settle in the exercise of its judicial power.

For whatever it is worth, however, may I just add that not all viewing and photographic opportunities¹⁸ of the Rizal Monument have been lost as a consequence of the construction of the *Torre de Manila*. From my own personal observation, the visibility *Torre de Manila* building in the backdrop of the Rizal Monument is highly dependent on the distance and angle from which the monument is viewed.

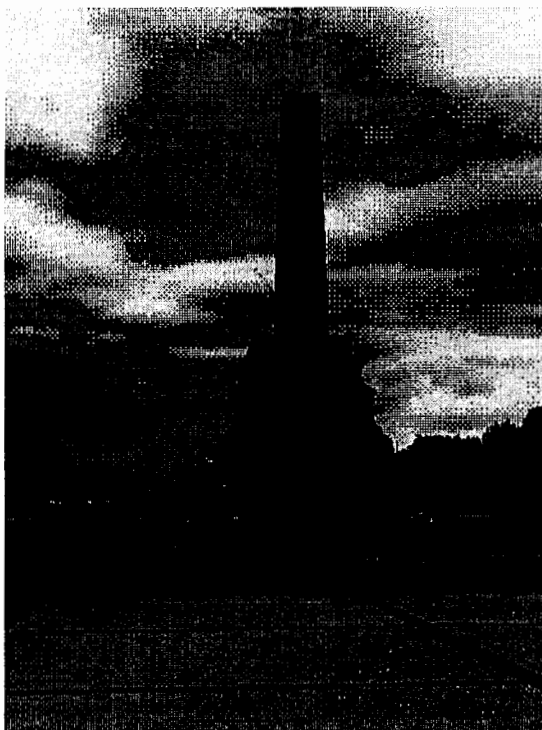
Thus, while one vantage point does expose the *Torre de Manila* in the background of the Rizal Monument:



Another vantage point or points permit a view of the Rizal Monument with only a minimum of, if not totally without, the *Torre de Manila* building in sight:

¹⁸ See page 11 of the Petition.

A handwritten signature or mark, possibly a stylized 'A' or a similar character, located in the bottom right corner of the page.



Hence, even from a lay perspective, it cannot be gainsaid that the construction of the *Torre de Manila* building had deprived anyone of the chance to view or photograph the Rizal Monument without the said building looming in the background.

V

Now, I vote.

It has been said that a writ of *mandamus* only lies in the enforcement of a clear legal right on the part of the petitioner and in the compulsion of a

clear legal duty on the part of the respondent.¹⁹ Here, it has been established that there is no law, whether national or local, that protects the view of dominance of the Rizal Monument or prohibits DMCI-PDI from constructing in its land a building such as the *Torre de Manila*. The conclusion, to my mind, is inevitable—petitioner is not entitled to the writ inasmuch as there is no compellable duty on the part of any of the respondents to stop or prohibit the construction of the *Torre de Manila* building or to otherwise destroy so much of the said building already constructed.

IN VIEW WHEREOF, I vote to **DISMISS** the instant petition for *mandamus*.

PRESBITERO J. VELASCO, JR.
Associate Justice

¹⁹ *Philippine Coconut Authority v. Primex Coco Products*, G.R. No. 163088, July 20, 2006, 495 SCRA 763.