

EN BANC

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

X-----

*[Handwritten signature]*

CONCURRING OPINION

*“To my family,*

*I ask you for forgiveness for the pain I caused you, but some day I shall have to die and it is better that I die now in the plentitude of my conscience.*

*Dear parents and brothers: Give thanks to God that I may preserve my tranquility before my death. I die resigned, hoping that with my death you will be left in peace. Ah! It is better to die than to live suffering. Console yourself.*

*I enjoin you to forgive one another the little meanness of life and try to live united in peace and good harmony. Treat your old parents as you would like to be treated by your children later. Love them very much in my memory.*

*Bury me in the ground. Place a stone and a cross over it. My name, the date of my birth and of my death. Nothing more. If later you wish to surround my grave with a fence, you can do it. No anniversaries. I prefer Paang Bundok.*

*Have pity on poor Josephine.”*

- Jose Rizal<sup>1</sup>

<sup>1</sup> The penultimate paragraph was cited in *rollo*, p. 2491, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, citing Jose Rizal’s letter to his family, “*A mi familia*,” undated, believed to have been written in Fort Santiago in December 1896, National Library of the Philippines. Translation by Jose Rizal National Centennial Commission (1964).

For the original text, see *rollo*, p. 2491, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, citing *Documentos Rizalinos* (Manila: Imprenta Publica, 1953), pp. 89-90. See also *Cartas Entre Rizal y Los Miembros de la Familia*, available at <<http://www.cervantesvirtual.com/descargaPdf/caras-entre-rizal-y-los-miembros-de-la-familia-segunda-parte-780268>>. (Last accessed on May 22, 2017). The Spanish text reads:

**LEONEN, J.:**

The soul of this nation and the story of the gallantry of our many peoples are more resilient than a bad photograph.

The Rizal Monument will not be physically altered. Adjoining properties owned by others have not been declared as national shrines.

Together with the Solicitor General, the petitioners argue that a specific view of the Rizal Monument is a legally protected right. They insist that even if the Rizal Monument is clearly in the foreground, the existence of the building of private respondents in the background violates that legally protected right. They insist that that background amounts to an alteration of the monument. They, however, fail to point to any clear text found in the Constitution, a statute, or an ordinance which contains this prestation. They have not succeeded in convincing this Court that there is precedent supporting their aesthetic propositions.

The dissent also acknowledges this. They agree that the temporary restraining order should be lifted. The dissent, however, insists that the matter be remanded to the Sangguniang Panlungsod of Manila to allow them, again, to deliberate as to whether to allow the construction or to cause its demolition.

I concur with the ponencia of Senior Associate Justice Antonio T. Carpio. There is no such law which mandates that the Rizal Monument, at a specific angle, should have only a specific background.

The Solicitor General and the petitioners are motivated by their passion, which can be summed up in a statement and which they want this

---

*A mi familia*

*Os pido perdón del dolor que os ocasiono, pero un día u otro yo tenía que morir y más vale que muera hoy en toda la plenitud de mi conciencia.*

*Queridos padres y hermanos: Dad gracias a Dios que me conserva la tranquilidad, antes de mi muerte. Muero resignado, esperando que con mi muerte os dejen en paz. ¡Ah! es mayor morir que vivir sufriendo. Consoláos.*

*Os recomiendo que os perdoneis, unos a otros las pequeñeces de la vida y tratad de vivir unidos en paz y en buena armonía. Tratad nuestros ancianos padres como quisierais ser tratados por vuestros hijos después. Amadlos mucho, en memoria mía.*

*Enterradme en tierra, ponedme una piedra encima y una cruz. Mi nombre, la fecha de mi nacimiento y la de mi muerte. Nada más. Si quereis después rodear mi fosa con un cerco, lo podreis hacer.—Nada de aniversarios.—Preferio Paang Bundok.*

*Tened compasión de la pobre Josefina.*

*l*

Court to believe as a truism: a view of the monument with a tall building as background destroys the “soul of our nation.” They claim that this gaze with a “photobomber” so undermines every conceivable narrative we can have of Rizal that there will be no way that our collective history as a people can be redeemed if we do not order the building to be torn down. They wish this Court of 15 unelected public servants to read this specific version of history into the Constitution of this Republic. They want us to declare that the monument of Rizal is so sacred that it should dwarf any other human structure without any other judicially discernible standard.

I do not agree.

There is no law which inscribes such narrative. There is no law that empowers any majority of the 15 members of this Supreme Court to impose our own narrative of our country’s own history.

History, like every other cultural understanding of who we are, is the dynamic product of constant democratic deliberation. To impose only a single version is akin to installing a dictatorship or disempowering present and future generations. Our history as a people is always in flux: always being written and always being reread in the light of contemporary challenges.

The Petition for Injunction, amended by this Court into a Petition for Mandamus, should fail.

## I

This Petition should have been dismissed outright. The petitioners did not have standing and this Court had no jurisdiction over the subject matter of this case that the Petition, originally for injunction, had to be converted to mandamus.

Section 1, Article VIII of the Constitution provides:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

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

For this Court to exercise its power of judicial review, four (4) requisites must be satisfied. First, there must exist “an actual and appropriate case.”<sup>2</sup> Second, the party bringing suit must have a “personal and substantial interest . . . in raising the constitutional question.”<sup>3</sup> Third, “the exercise of judicial review is pleaded at the earliest opportunity.”<sup>4</sup> Lastly, “the constitutional question is the *lis mota* of the case.”<sup>5</sup>

The second requisite is absent in this case.

Legal standing requires that the party bringing suit has “sustained or will sustain direct injury as a result of the governmental act that is being challenged.”<sup>6</sup> There must be “a personal stake in the outcome of the controversy”<sup>7</sup> on the part of the petitioner so as not to unnecessarily impede the judicial process. “For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice.”<sup>8</sup>

There are exceptions to the rule on standing. Non-traditional suitors – taxpayers,<sup>9</sup> voters,<sup>10</sup> concerned citizens,<sup>11</sup> and legislators<sup>12</sup> – have been granted standing to question the constitutionality of governmental acts. The “transcendental importance”<sup>13</sup> of the issues raised is often cited as basis for granting standing.

Petitioner Knights of Rizal anchors its legal standing on its charter, Republic Act No. 646, Section 2 of which provides:

SECTION 2. The purposes of this corporation shall be to study the teachings of Dr. Jose Rizal, to inculcate and propagate them in and among all classes of the Filipino people, and by words and deeds to exhort our citizenry to emulate and practice the examples and teachings of our national hero; to promote among the associated knights the spirit of patriotism and Rizalian chivalry; to develop a perfect union among the

<sup>2</sup> *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 632 (2000) [Per J. Kapunan, En Banc], citing *Philippine Constitution Association v. Enriquez*, 235 SCRA 506 (1994), citing *Luz Farms v. Secretary of the Department of Agrarian Reform*, 192 SCRA 51 (1990); *Dumlao v. Commission on Elections*, 95 SCRA 392 (1980); and, *People v. Vera*, 65 Phil. 56 (1937).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 632-633 (2000) [Per J. Kapunan, En Banc], citing *Joya v. Presidential Commission on Good Government*, 225 SCRA 568, 576 (1993).

<sup>7</sup> *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 633 (2000) [Per J. Kapunan, En Banc], citing *Baker v. Carr*, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663, 678 (1962).

<sup>8</sup> *Lozano v. Nograles*, 607 Phil. 334, 343-344 (2009) [Per C.J. Puno, En Banc].

<sup>9</sup> *Funa v. Villar*, 686 Phil. 571, 586(2012) [Per J. Velasco, Jr., En Banc], citing *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 161.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Araneta v. Dinglasan*, 84 Phil. 368, 373 (1949) [Per J. Tuason, En Banc].

Filipinos in revering the memory of Dr. Jose Rizal; and to organize and hold programs commemorative of Rizal's nativity and martyrdom.

Petitioner further cites as basis Section 7 of Republic No. 7356 or the Law Creating the National Commission for Culture and the Arts:

SECTION 7. *Preservation of the Filipino Heritage.* — It is the duty of every citizen to preserve and conserve the Filipino historical and cultural heritage and resources. The retrieval and conservation of artifacts of Filipino culture and history shall be vigorously pursued.

However, like any other corporation, petitioner Knights of Rizal may only exercise its corporate powers, specifically, its power to sue,<sup>14</sup> through its Board of Directors.<sup>15</sup> There must be a duly issued Secretary's Certificate attached to the petition stating that the corporation's board allowed the filing of the suit in behalf of the corporation.<sup>16</sup>

Here, the Secretary's Certificate was not duly accomplished. There was no indication of petitioner's Corporate Secretary Maximo Salazar's community tax certificate number and competent evidence of identity. These were left blank in the Acknowledgment page.<sup>17</sup> The date of the alleged special meeting when Diosdado Santos, Deputy Supreme Commander of petitioner, was authorized by the Board to file the case, was also left blank.<sup>18</sup>

Moreover, there was no showing of a direct injury to petitioner or a specific member of Knights of Rizal caused by the construction of Torre de Manila. “[Losing] its moral authority and capacity ‘to inculcate and propagate. . . [the teaching of] Dr. Jose Rizal’”<sup>19</sup> is too general and vague an interest to grant Knights of Rizal legal standing to sue. Further, Knights of

<sup>14</sup> CORP. CODE, sec. 36(1) provides:

SECTION 36. *Corporate Powers and Capacity.* — Every corporation incorporated under this Code has the power and capacity:

1. To sue and be sued in its corporate name.

<sup>15</sup> CORP. CODE, sec. 23 provides:

SECTION 23. *The Board of Directors or Trustees.* — Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.

Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be a director. Trustees of non-stock corporations must be members thereof. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines.

<sup>16</sup> See *The Executive Secretary v. Court of Appeals*, 473 Phil. 27, 51 (2004) [Per J. Callejo, Sr., Second Division].

<sup>17</sup> *Rollo*, p. 36, Secretary's Certificate.

<sup>18</sup> *Id.* at 35, Secretary's Certificate.

<sup>19</sup> *Id.* at 2575–2576, Memorandum for Petitioner.

Rizal is not a *citizen* with the duty to preserve and conserve historical and cultural heritage.

In *Integrated Bar of the Philippines v. Zamora*,<sup>20</sup> this Court denied legal standing to the Integrated Bar of the Philippines (IBP) for the organization's lack of direct and personal injury in the deployment of the Marines in select areas in Metro Manila. "[The IBP's] alleged responsibility to uphold the rule of law and the Constitution,"<sup>21</sup> this Court said, was not sufficient an interest considering the lack of allegation that the civil liberties of any of its individual members were violated. Explained the Court:

In the case at bar, the IBP primarily anchors its standing on its alleged responsibility to uphold the rule of law and the Constitution. Apart from this declaration, however, the IBP asserts no other basis in support of its *locus standi*. The mere invocation by the IBP of its duty to preserve the rule of law and nothing more, while undoubtedly true, is not sufficient to clothe it with standing in this case. This is too general an interest which is shared by other groups and the whole citizenry. Based on the standards above-stated, the IBP has failed to present a specific and substantial interest in the resolution of the case. Its fundamental purpose which, under Section 2, Rule 139-A of the Rules of Court, is to elevate the standards of the law profession and to improve the administration of justice is alien to, and cannot be affected by the deployment of the Marines. It should also be noted that the interest of the National President of the IBP who signed the petition, is his alone, absent a formal board resolution authorizing him to file the present action. To be sure, members of the BAR, those in the judiciary included, have varying opinions on the issue. Moreover, the IBP, assuming that it has duly authorized the National President to file the petition, has not shown any specific injury which it has suffered or may suffer by virtue of the questioned governmental act. Indeed, none of its members, whom the IBP purportedly represents, has sustained any form of injury as a result of the operation of the joint visibility patrols. Neither is it alleged that any of its members has been arrested or that their civil liberties have been violated by the deployment of the Marines. What the IBP projects as injurious is the supposed "militarization" of law enforcement which might threaten Philippine democratic institutions and may cause more harm than good in the long run. Not only is the presumed "injury" not personal in character, it is likewise too vague, highly speculative and uncertain to satisfy the requirement of standing. Since petitioner has not successfully established a direct and personal injury as a consequence of the questioned act, it does not possess the personality to assail the validity of the deployment of the Marines. This Court, however, does not categorically rule that the IBP has absolutely no standing to raise constitutional issues now or in the future. The IBP must, by way of allegations and proof, satisfy this Court that it has sufficient stake to obtain judicial resolution of the controversy.<sup>22</sup>

<sup>20</sup> 392 Phil. 618 (2000) [Per J. Kapunan, En Banc].

<sup>21</sup> Id. at 633.

<sup>22</sup> Id. at 633-634.

With petitioner Knights of Rizal having no direct and personal interest in this case, it has no legal standing. On this ground alone, this Petition should have been dismissed outright.

The liberality in granting legal standing to those who have none should be tempered especially when the party suing is a corporation, the composition and nature of which inherently make the determination of *direct* and *personal* interest difficult. This is especially true in cases involving alleged violations of provisions under the Bill of Rights, which primarily involves “fundamental *individual* rights.”<sup>23</sup>

The constitutional issue raised here is indeed novel. This Court has yet to decide on the extent of protection the State has to afford to our nation’s historical and cultural heritage and resources, specifically, whether a declared national cultural treasure’s sightlines and settings are part of its physical integrity.

Nevertheless, novelty, in it itself, does not equate to the transcendental importance of the issues involved. Constitutional issues, however novel, may likewise be resolved by regional trial courts at the first instance. Regional trial courts and this Court share concurrent original jurisdiction over issues involving constitutional questions.<sup>24</sup>

As pointed out in the majority opinion, factual issues<sup>25</sup> were raised in this Petition.<sup>26</sup> This Court, not being a trier of facts,<sup>27</sup> the Petition should have been filed before the regional trial court. This is also consistent with the doctrine of hierarchy of courts. Recourse must first be obtained from lower courts sharing concurrent jurisdiction with a higher court.<sup>28</sup>

Clarifying this concept in *Diocese of Bacolod v. Commission on Elections*,<sup>29</sup> we said:

The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not

<sup>23</sup> See Justice Ynares-Santiago’s Dissenting Opinion in *People v. Lacson*, 459 Phil. 330, 372 (2003) [Per J. Callejo, Sr., En Banc].

<sup>24</sup> See *Ynot v. Intermediate Appellate Court*, 232 Phil. 615, 621 (1987) [Per J. Cruz, En Banc].

<sup>25</sup> For instance, on page 17–19 of its Petition for Injunction, petitioner Knights of Rizal raises the issue of whether the Torre de Manila is a nuisance *per se*. See *Ramcar, Inc. v. Millar*, 116 Phil. 825, 828–829 (1962) [Per J. J.B.L. Reyes, En Banc] where this Court held that “[w]hether a particular thing is or is not a nuisance is a question of fact[.]”

<sup>26</sup> Ponencia, p. 15.

<sup>27</sup> *Kalipunan ng Mahihirap, Inc. v. Robredo*, G.R. No. 200903, July 22, 2014 [Per J. Brion, En Banc].

<sup>28</sup> See *People v. Cuaresma*, 254 Phil. 418, 426–428 (1989) [Per J. Narvasa, First Division].

<sup>29</sup> G.R. No. 205728, January 21, 2015  
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf>>  
[Per J. Leonen, En Banc].

only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the ‘actual case’ that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.

The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.

This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.<sup>30</sup> (Citation omitted)

## II

This Court also has no subject matter jurisdiction over this case.

Jurisdiction over the subject matter is the “power to hear and determine cases of the general class to which the proceedings in question belong.”<sup>31</sup> For this Court, its subject matter jurisdiction is provided in the first paragraph of Section 5 of Article VIII of the Constitution:

SECTION 5. The Supreme Court shall have the following powers:  
(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

As for cases for injunction such as that originally filed by petitioner Knights of Rizal, this Court has no jurisdiction. Actions for injunction have subject matters incapable of pecuniary estimation.<sup>32</sup> Therefore, such actions

<sup>30</sup> Id. at 14.

<sup>31</sup> *Reyes v. Diaz*, 73 Phil. 484, 486 (1941) [Per J. Moran, En Banc].

<sup>32</sup> *See Bokingo v. Court of Appeals*, 523 Phil. 186, 196–197 (2006) [Per J. Callejo, Sr., First Division].

are under the exclusive original jurisdiction of regional trial courts.<sup>33</sup> Actions for injunction cannot be commenced before any other court.

The present Petition was converted into mandamus as a matter of “[relaxing] procedural rules.”<sup>34</sup> The dissent of Justice Francis H. Jardeleza cites as legal bases *Gamboa v. Teves*,<sup>35</sup> *Salvacion v. Central Bank of the Philippines*,<sup>36</sup> and *Alliance of Government Workers v. Minister of Labor and Employment*<sup>37</sup> where the petitions, as originally filed, were for declaratory relief. Despite lack of jurisdiction to take cognizance of the petitions,<sup>38</sup> this Court resolved the purely legal questions involved in *Gamboa*, *Salvacion*, and *Alliance of Government Workers* because of the issues’ alleged “far-reaching implications.”<sup>39</sup>

*Gamboa*, *Salvacion*, and *Alliance of Government Workers* should be the exception rather than the rule. Subject matter jurisdiction is a matter of law.<sup>40</sup> It cannot be “conferred by the acquiescence of the courts.”<sup>41</sup> A court must not change the relief and remedy to accommodate a petition over which it has no subject matter jurisdiction the same way that parties cannot choose, consent to, or agree as to which court or tribunal should decide their disputes.<sup>42</sup> Accommodating a petition which, on its face, this Court cannot resolve for lack of jurisdiction, undermines the impartiality and independence of this Court. It ultimately erodes the public trust in our court system.

### III

Even if the present Petition is treated as one for mandamus, it does not satisfy the requirements under Rule 65, Section 3 of the Rules of Court. There is no law that “specifically enjoins as a duty” the protection of sightlines and settings of historical or cultural properties.

Rule 65, Section 3 of the Rules of Court provides:

<sup>33</sup> Batas Blg. 129, sec. 19(1) provides:  
SECTION 19. *Jurisdiction in Civil Cases*. — Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation.

<sup>34</sup> J. Jardeleza’s Dissenting Opinion.

<sup>35</sup> 668 Phil. 1 (2011) [Per J. Carpio, En Banc].

<sup>36</sup> 343 Phil. 539 (1997) [Per J. Torres, Jr., En Banc].

<sup>37</sup> 209 Phil. 1 (1983) [Per J. Gutierrez, Jr., En Banc].

<sup>38</sup> Petitions for declaratory relief involve subject matters incapable of pecuniary estimation and, therefore, are under the exclusive original jurisdiction of the Regional Trial Courts. *See City of Lapu-Lapu v. Philippine Economic Zone Authority*, G.R. No. 184203, November 26, 2014, [Per J. Leonen, Second Division].

<sup>39</sup> *Gamboa v. Teves*, 668 Phil. 1, 36 (2011) [Per J. Carpio, En Banc]; *Salvacion v. Central Bank of the Philippines*, 343 Phil. 539, 556 (1997) [Per J. Torres, Jr., En Banc]; *Alliance of Government Workers v. Minister of Labor and Employment*, 209 Phil. 1, 12 (1983) [Per J. Gutierrez, Jr., En Banc].

<sup>40</sup> *Republic v. Estipular*, 391 Phil. 211, 218 (2000) [Per J. Panganiban, Third Division].

<sup>41</sup> Id.

<sup>42</sup> Id.

SECTION 3. *Petition for Mandamus.* – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that the judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

The following are required for mandamus to lie: first, “the plaintiff has a clear legal right to the act demanded”;<sup>43</sup> second, “it must be the duty of the defendant to perform the act, because it is mandated by law”;<sup>44</sup> third, “the defendant unlawfully neglects the performance of the duty enjoined by law”;<sup>45</sup> fourth, “the act to be performed is ministerial, not discretionary”;<sup>46</sup> and, lastly, “there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.”<sup>47</sup>

#### IV

The first requisite is absent in this case. Petitioner Knights of Rizal has no clear legal right to an injunction against the construction of Torre de Manila. Petitioners failed to point to a law that specifically prohibits the construction of any structure that may obstruct the sightline, setting, or backdrop of a historical or cultural heritage or resource.

Petitioner Knights of Rizal mainly argues that the sightlines and setting of the Rizal Monument are protected under Sections 15 and 16, Article XIV of the Constitution:

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

---

<sup>43</sup> *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 705 (2010) [Per J. Bersamin, En Banc].

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

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

It is argued that Sections 15 and 16, Article XIV of the Constitution are not self-executing provisions and, therefore, cannot be made basis to stop the construction of Torre de Manila. The dissenting opinion considers that Sections 15 and 16 "do not create any judicially enforceable right and obligation for the preservation, protection or conservation of the 'prominence, dominance, vista points, vista corridors, sightlines and setting of the Rizal Park and the Rizal Monument.'"<sup>48</sup> It adds that Sections 15 and 16 are "mere statements of principles and policy"<sup>49</sup> and that "[t]he constitutional exhortation to 'conserve, promote, and popularize the nation's historical and cultural heritage and resources' lacks 'specific, operable norms and standards' by which to guide its enforcement."<sup>50</sup>

As examples of other non-self-executing provisions in the Constitution, the dissent enumerates Sections 11,<sup>51</sup> 12,<sup>52</sup> and 13,<sup>53</sup> Article II; Sections 1<sup>54</sup> and 13,<sup>55</sup> Article XIII; and Sections 1<sup>56</sup> and 2,<sup>57</sup> Article XIV.

<sup>48</sup> J. Jardeleza's Dissenting Opinion.

<sup>49</sup> J. Jardeleza's Dissenting Opinion.

<sup>50</sup> J. Jardeleza's Dissenting Opinion.

<sup>51</sup> CONST. art. II, sec. 11 provides:

SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

*Basco v. Philippine Amusement and Gaming Corporation*, 274 Phil. 323, 343 (1991) [Per J. Paras, En Banc].

<sup>52</sup> CONST. art. II, sec. 12 provides:

SECTION 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

*Basco v. Philippine Amusement and Gaming Corporation*, 274 Phil. 323, 343 (1991) [Per J. Paras, En Banc].

<sup>53</sup> CONST. art. II, sec. 13 provides:

SECTION 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

*Basco v. Philippine Amusement and Gaming Corporation*, 274 Phil. 323, 343 (1991) [Per J. Paras, En Banc].

<sup>54</sup> CONST. art. XIII, sec. 1 provides:

SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

*Tolentino v. Secretary of Finance*, G.R. No. 115455, August 25, 1994, 235 SCRA 630, 685 [Per J. Mendoza, En Banc].

<sup>55</sup> CONST. art. XIII, sec. 13 provides:

SECTION 13. The State shall establish a special agency for disabled persons for rehabilitation, self-development and self-reliance, and their integration into the mainstream of society.

*Basco v. Philippine Amusement and Gaming Corporation*, 274 Phil. 323, 343 (1991) [Per J. Paras, En Banc].

<sup>56</sup> CONST. art. XIV, sec. 1 provides:

SECTION 1. The State shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all.

Further cited is *Kilosbayan v. Morato*<sup>58</sup> where, according to the dissent, this Court held that the provisions in Article II on the Declaration of Principles and State Policies were not self-executing.

Sections 15 and 16, Article XIV of the Constitution are not legal bases for stopping the construction of Torre de Manila. Textually, nothing in Sections 15 and 16 indicates that the sightlines and setting surrounding a historical and cultural heritage or resource is subject to protection. Sections 15 and 16 contain substantive standards too general to serve as basis *for courts* to grant any relief to petitioner Knights of Rizal. To attempt to operate with these general substantive standards will “propel courts into uncharted ocean of social and economic policy making,”<sup>59</sup> encroaching on the functions properly belonging to the legislative and executive branches.

I do not agree, however, in making distinctions between self-executing and non-self-executing provisions.

A self-executing provision of the Constitution is one “complete in itself and becomes operative without the aid of supplementary or enabling legislation.”<sup>60</sup> It “supplies [a] sufficient rule by means of which the right it grants may be enjoyed or protected.”<sup>61</sup> “[I]f the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action,”<sup>62</sup> the provision is self-executing.

---

*Tolentino v. Secretary of Finance*, G.R. No. 115455, August 25, 1994, 235 SCRA 630, 685 [Per J. Mendoza, En Banc].

<sup>57</sup> CONST. art. XIV, sec. 2 provides:

SECTION 2. The State shall:

- (1) Establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society;
- (2) Establish and maintain a system of free public education in the elementary and high school levels. Without limiting the natural right of parents to rear their children, elementary education is compulsory for all children of school age;
- (3) Establish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the underprivileged;
- (4) Encourage non-formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs; and
- (5) Provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills.

<sup>58</sup> 316 Phil. 652 (1995) [Per J. Mendoza, En Banc], cited by Justice Jardeleza in his Dissenting Opinion.

<sup>59</sup> Justice Feliciano’s Separate Concurring Opinion in *Oposa v. Factoran*, G.R. No. 101083, July 30, 1993, 224 SCRA 792, 818 [Per J. Davide, Jr., En Banc].

<sup>60</sup> *Manila Prince Hotel v. Government Service Insurance System*, 335 Phil. 82, 102 (1997) [Per J. Bellosillo, En Banc].

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

On the other hand, if the provision “lays down a general principle,”<sup>63</sup> or an enabling legislation is needed to implement the provision, it is not self-executing.

To my mind, the distinction creates false second-order constitutional provisions. It gives the impression that only self-executing provisions are imperative.

All constitutional provisions, even those providing general standards, must be followed. Statements of general principles and policies in the Constitution are frameworks within which branches of the government are to operate. The key is to examine if the provision contains a prestation and to which branch of the government it is directed. If addressed either to the legislature or the executive, the obligation is not for this Court to fulfill.

## V

There are no second-order provisions in the Constitution. We create this category when we classify the provisions as “self-executing” and “non-self executing.” Rather, the value of each provision is implicit in their normative content.

For instance, Sections 14, 15, 16, and 17, Article XIV of the Constitution must be read as provisions that contribute to each other’s coherence. That is, we must interpret them holistically to understand the concepts labeled as culture and history. None of these provisions deserve to be read in isolation.

Section 14 reads:

SECTION 14. The State shall foster the preservation, enrichment, and dynamic evolution of a Filipino national culture based on the principle of unity in diversity in a climate of free artistic and intellectual expression.

The object of the provision is a “Filipino national culture.” In relation to this object, it is the State’s duty to foster its “preservation, enrichment,” and development. Our Filipino national culture should be based on the “principle of unity in diversity.” It grows “in a climate of free artistic and intellectual expression.”

Clearly, the Constitution acknowledges that culture exists at various levels and with many dimensions. In terms of social space, there is a

---

<sup>63</sup> Id.

“national” culture and local ones. There is diversity also among cultures. Ours is a multi-ethnic, multi-vocal, and multi-lingual state.

The Constitutional provision further implies that there can be unity both in the diversity of our culture as well as in their commonalities. Thus, the cultures that vary in terms of their spatial, ethnic, or linguistic applications are not mutually exclusive of each other. They interact and reflect each other.

Significantly, culture evolves. It is not only to be preserved; it should also be enriched. It is not to archaically retard; it must develop. Intrinsic in the very concept of culture is that it is dynamic. “Free artistic and intellectual expression” ensures its malleability so that it becomes appropriate to the contemporary world while at the same time maintaining the values embedded in a common framework that defines the implicit ways of life that we transmit through generations.

Section 15 provides:

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

Section 16 provides:

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

These provisions recognize the importance of arts and letters as cultural artifact. This provision, thus, acknowledges the State’s duty to “conserve, promote, and popularize” five (5) artifacts: (a) historical heritage, (b) historical resources, (c) cultural heritage, (d) cultural resources, and (e) artistic creations.

Section 15 distinguishes between history and culture. History is a narrative of our past. Culture, on the other hand, encompasses the implicit social understanding of the ways of life that we transmit from generation to generation. While history is a contemporary narration of our past, culture is always contemporary with inspiration from both our past and our ambitions towards a common future.

History can explain or reflect on our culture. Culture, on the other hand, provides the frame for understanding our history. They both relate to each other. Being aspects of social consciousness, they also both evolve.

History and culture produce material things which can be preserved because they serve the purpose of symbolism. Historical heritage may consist of the monuments that will cause collective reflection. Historical resources are the materials which can be used to understand and perhaps clarify narratives of our past.

Of course, Section 16 also acknowledges artistic creations, which may not be the product of historical narrative or of culture. It thus provides an opening for the introduction of present understandings of culture. Artists are not necessarily bound by a view of the past. Art can also be an insight to our future.

Section 17 provides for acknowledgement of indigenous culture, thus:

SECTION 17. The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.

This provision implies that culture may be indigenous, but not entirely so. By giving protection to the culture of indigenous communities in terms of their traditions and institutions, it impliedly also acknowledges that there are portions of our culture borrowed from our interaction with the outside world. In this view, culture is assumed to be dynamic. It is not unchanging.

In a democracy, dominant social, historical, and even cultural understanding is and will always be contested. Present generations are imbued with intrinsic rights to give their own reading of past events. They are not passive receptacles of cultural transmissions of their ancestors. It is they who live through the challenges of their generation and it is they, who armed with their variations on culture and their reading of history, contribute to our sense of nationhood.

Thus, our Constitution acknowledges the importance of freedom of expression. Nuance and dissent provide a rich but continuous stream of contestation. Dominant understanding is always challenged by newer ones. It is through these challenges to understanding of the past that history and culture undergo constant enrichment and development. There is the constant problem of the real significance of events as well as personalities that animate our history. History becomes more contemporarily legible to the present generation.

Historians constantly discover more evidence and factual detail in past events which produce better insights of ourselves.

In this context, no hero can be venerated as unchanging nor as eternal god. No narrative of a hero should be accepted as more impervious than religious truth. No hero should be venerated exclusively as the “soul of the nation.”

Similarly, no monument is so sacred that the way that it is seen and the meaning of such gaze should be kept unchanging.

The argument that the background of the Rizal Monument should be unchanging would be to attempt to impose several layers of inference that cumulate into an unreasonable view of how we should understand Jose Rizal, the extent that he was a protagonist during his historical period, and the significance of the events for us at present.

For instance, Jose Rizal’s humility can be inferred through a letter he wrote and which was discovered posthumously. In a letter to his brother, he expressed his desire to be buried in an unmarked grave in a cemetery in Paco, Manila. This humility in public service may be lost when we insist that a monument, which Jose Rizal never imagined, commissioned to a Swiss artist, depicting him as dominant over all others who bled for our freedom, is profusely venerated.

This veneration amounts to a dominant narrative that petitioner wishes to impose. More troubling is that the petitioner wants to do so undemocratically: through a judicial writ.

Symbols mark a consensus which can change through time. By itself, it has no intrinsic value. It is not the material that should be protected. Rather, it is the values implicit in the symbolism which take part in a narrative.

Jose Rizal fought for a democratic society where every citizen could be educated and therefore critical of the dominant understandings imposed by the powerful. We deny him that vision when we impose on others a view of the aesthetic by judicial fiat.

## VI

Before Rizal was executed on December 30, 1896, he wrote his family expressing his wishes for his burial. The letter reads, in part:

Bury me in the ground. Place a stone and a cross over it. My name, the date of my birth and of my death. Nothing more. If later you wish to surround my grave with a fence, you can do it. No anniversaries. I prefer Paang Bundok.<sup>64</sup>

After his execution, his body was secretly buried in Paco Cemetery. His sister, Narcisa, was able to convince the gravedigger to place a small marble slab on the gravesite.<sup>65</sup>

Rizal's family had his body exhumed on August 17, 1898 and placed in an ivory urn. The urn was kept in his mother's house in Binondo.<sup>66</sup>

It was on September 28, 1901 when Act No. 243<sup>67</sup> was passed. Act No. 243 authorized the use of Luneta for the building of a monument in honor of Rizal. The cost would be from publicly-raised funds and supervised by a committee composed of Paciano Rizal, Pascual Poblete, Juan Tuason, Teodoro Yangco, Mariano Limjap, Maximino Paterno, Ramon Genato, Tomas del Rosario, and Ariston Bautista. The Philippine Commission then passed Act No. 893<sup>68</sup> in 1903, appropriating US\$15,000.00 to augment the fund.<sup>69</sup>

The committee was also tasked to oversee the international design competition from 1905 to 1907. European and American sculptors were

---

<sup>64</sup> *Rollo*, p. 2491, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* Jose Rizal, letter to his family, "A mi familia," undated, believed to have been written in Fort Santiago in December 1896, National Library of the Philippines; translation by Jose Rizal National Centennial Commission, 1964.

<sup>65</sup> *Id.* at 2492, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* Asuncion Lopez Bantug, Lolo Jose (Manila: Asuncion Lopez Bantug, Vibal Foundation, Inc., and Intramuros Administration, 2008), p. 165.

<sup>66</sup> *Id.* at 2492, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* Bantug, pp. 168-169 and "Jose Rizal (Remains Interred)," in National Historical Institute, Historical Markers, Metro Manila (Manila: National Historical Institute, 1993), p. 274.

<sup>67</sup> An Act granting the right to use public land upon the Luneta in the city of Manila upon which to erect a statue of Jose Rizal, from a fund to be raised by public subscriptions, and prescribing as a condition the method by which such subscription shall be collected and disbursed.

<sup>68</sup> An Act Appropriating Fifteen Thousand Dollars, United States Currency, For The Purpose Of Contributing To The Erection Of The Rizal Monument, And Authorizing The Insular Treasurer To Deposit The Funds Already Collected In A Bank To Draw Interest.

<sup>69</sup> *Rollo*, p. 2492, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* Act No. 243 (1901) and Act No. 893 (1903).

invited to join the competition. The materials, however, would be produced in the Philippines. The estimated cost of the project was ₱100,000.00.<sup>70</sup>

There were 40 entries for the competition. On January 8, 1908, another committee composed of Governor-General James F. Smith, John T. Macleod, and Maximino M. Paterno announced their decision to the press and declared the *Al Martir de Bagumbayan* (To the Martyr of Bagumbayan) by Carlos Nicoli of Carrara, Italy as the winner of the competition.<sup>71</sup>

The committee was dominated by foreigners. The top two winners were foreigners.

Carlos Nicoli could not post the required bond during the construction period. Thus, the second prize winner, the *Motto Stella* (Guiding Star) by Richard Kissling of Switzerland, was instead built. It consisted of a bronze statue of Rizal dressed in an overcoat facing west and holding a book, two boys reading a book facing south, a mother and child facing north, and a granite obelisk in the middle.<sup>72</sup>

The monument was constructed 100 meters southeast from Rizal's execution site. On December 29, 1912, the urn of Rizal's remains was brought to the Marble Hall of the Ayuntamiento de Manila. "After lying in state for a day, [it] was carried by funeral procession to Luneta." "The remains were buried at the base of the monument." The monument was inaugurated the following year.<sup>73</sup>

In the year of Rizal's centenary in 1961, Kissling's original design was altered by Juan Nakpil and commissioned by the Jose Rizal National Centennial Commission, in response to the concern that new structures in Luneta would dwarf the monument. A stainless steel pylon was

---

<sup>70</sup> Id. at 2492, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C.

<sup>71</sup> Id. at 2492, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* "Prize Winners," Manila Times, 8 January 1908; "The Rizal Monument: Story of its Own Erection," Philippines International 8, 2 (June-July 1964): 4-8 and Ambeth R. Ocampo, "Much Ado about Torre: Rizal Asked Only for Cross on Tombstone," Philippine Daily Inquirer, 23 August 2015, A1.

<sup>72</sup> Id. at 2492-2493, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* Prize Winners," Manila Times, 8 January 1908; Ambeth R. Ocampo, "Much Ado about Torre: Rizal Asked Only for Cross on Tombstone," Philippine Daily Inquirer, 23 August 2015, A1; and Juan F. Nakpil and Sons, Proposed Improvement of the Rizal Monument, Sheet A-1, Set 1/3, 20 April 1961, NHCP Library.

<sup>73</sup> Id. at 2493, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* Ambeth R. Ocampo, "Much Ado about Torre: Rizal Asked Only for Cross on Tombstone," Philippine Daily Inquirer, 23 August 2015, A1; Bantug, p. 169; footnote to "De Rizal a su familia (sin firma ni fecha)," in Oficina de Bibliotecas Publicas, Documentos Rizalinos Regalados Por El Pueblo Español Al Pueblo Filipino (Manila: Imprenta Publica, 1953), p. 91; Austin Craig, Rizal's Life and Minor Writings (Manila: Philippine Education Co., Inc., 1927), p. 215; and Sunday Times, 28 December 1947, p. 12.

superimposed over the obelisk, increasing the structure's height from 41 feet and 8 inches to 100 feet.<sup>74</sup>

The stainless steel pylon, however, divided public opinion. Some artists, such as Napoleon Abueva, supported it, while others were critical of it.<sup>75</sup> The pylon was removed two (2) years later "to avoid a temporary restraining order from a court that shared Nakpil's aesthetic sense."<sup>76</sup> The design of the monument remains unchanged to this day.

In 2013, the Rizal Monument was declared a National Monument<sup>77</sup> and a National Cultural Treasure.<sup>78</sup>

The value we now put on a monument designed by a Swiss, and chosen by a panel dominated by our American colonialists was weaved as part of our narrative. The monument is not a material artifact that was created by the hands of our anti-imperialist revolutionaries.

It would be reasonable to consider that the significance of the Rizal Monument is a postcolonial reflection of those in power.

## VII

The statutes cited by petitioner Knights of Rizal are Republic Act No. 4846 or the "Cultural Properties Preservation and Protection Act"; Republic Act No. 7356 or the "Law Creating the National Commission for Culture and the Arts"; and Republic Act No. 10066 or the "National Cultural Heritage Act of 2009."

Enacted in 1966, Republic Act No. 4846 declares it the policy of the State "to preserve and protect the cultural properties of the nation and to

---

<sup>74</sup> Id. at 2493, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* The Manila Times, 16 April 1963; The Chronicle magazine, 27 April 1963; and Juan F. Nakpil and Sons, Proposed Improvement of the Rizal Monument, Sheet A-1, Set 1/3, 20 April 1961, NHCP Library.

<sup>75</sup> Id. at 2494, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* A. Ocampo, "Torre de Manila, Flap Repeats Itself," Philippine Daily Inquirer, 30 August 2015.

<sup>76</sup> Id.

<sup>77</sup> Id. at 2494, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* NHCP Board Resolution No. 5 s. 2013, "Declaring the Rizal Monument in Rizal Park a National Monument," 15 April 2013, NHCP Records Section.

<sup>78</sup> Id. at 2494, National Historical Commission of the Philippines Historical Notes on the Rizal Monument and Park, NHCP Memorandum, Annex C, *citing* National Museum, Declaration No. 9 2013, "Declaration of the Monument to Dr. Jose Rizal in Rizal Park, City of Manila as a National Cultural Treasure," 14 November 2013.

safeguard their intrinsic value.”<sup>79</sup> With respect to Republic Act No. 7356, it provides:

SECTION 7. *Preservation of the Filipino Heritage.* — It is the duty of every citizen to preserve and conserve the Filipino historical and cultural heritage and resources. The retrieval and conservation of artifacts of Filipino culture and history shall be vigorously pursued.

Similar to the State policy declared in Republic Act No. 4846, Section 2 of Republic Act No. 10066 more elaborately provides:

SECTION 2. *Declaration of Principles and Policies.* — Sections 14, 15, 16 and 17, Article XIV of the 1987 Constitution declare that the State shall foster the preservation, enrichment and dynamic evolution of a Filipino culture based on the principle of unity in diversity in a climate of free artistic and intellectual expression. The Constitution likewise mandates the State to conserve, develop, promote and popularize the nation’s historical and cultural heritage and resources, as well as artistic creations. It further provides that all the country’s artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State, which may regulate its disposition.

In the pursuit of cultural preservation as a strategy for maintaining Filipino identity, this Act shall pursue the following objectives:

- (a) Protect, preserve, conserve and promote the nation’s cultural heritage, its property and histories, and the ethnicity of local communities;
- (b) Establish and strengthen cultural institutions; and
- (c) Protect cultural workers and ensure their professional development and well-being.

The State shall likewise endeavor to create a balanced atmosphere where the historic past coexists in harmony with modern society. It shall approach the problem of conservation in an integrated and holistic manner, cutting across all relevant disciplines and technologies. The State shall further administer the heritage resources in a spirit of stewardship for the inspiration and benefit of the present and future generations.

## VIII

In case the *physical* integrity of a national cultural treasure or important cultural property is in danger of destruction or significant alteration from its original state, Republic Act No. 10066 grants the “appropriate cultural agency” the power to issue a cease and desist order. Section 25 of Republic Act No. 10066 provides:

---

<sup>79</sup> Rep. Act. No. 4846, sec. 2.

SECTION 25. *Power to Issue a Cease and Desist Order.* — When the physical integrity of the national cultural treasures or important cultural properties are found to be in danger of destruction or significant alteration from its original state, the appropriate cultural agency shall immediately issue a Cease and Desist Order *ex parte* suspending all activities that will affect the cultural property. The local government unit which has the jurisdiction over the site where the immovable cultural property is located shall report the same to the appropriate cultural agency immediately upon discovery and shall promptly adopt measures to secure the integrity of such immovable cultural property. Thereafter, the appropriate cultural agency shall give notice to the owner or occupant of the cultural property and conduct a hearing on the propriety of the issuance of the Cease and Desist Order. The suspension of the activities shall be lifted only upon the written authority of the appropriate cultural agency after due notice and hearing involving the interested parties and stakeholders.

Petitioner Knights of Rizal argues that a national cultural treasure's "physical integrity" includes its "vista points" and "visual corridors" as well as its "site" or its "surrounding areas." As basis for its argument, petitioner Knights of Rizal cites the National Historical Commission of the Philippines' Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages:

1. **DOMINANCE**

Monuments are landmarks of our cities, towns and provinces. They must be honored, preserved and protected. Monuments should be given due prominence since they symbolize national significance. For the purposes of these guidelines, the Rizal National Monument in Luneta (Rizal Park, Manila) and the Bonifacio National Monument (Caloocan City) are established as objects of reference . . .

....

Façade of buildings around a monument, particularly on a rotunda or circle can be retrofitted with a uniform design to enhance the urban renewal of the site and the prominence and dominance of the monument. Likewise, building heights, volume and design should be regulated.

**Measures by which dominance could be achieved are the following:**

- a. Maintain a clean and neat environment;
- b. Keep vista points and visual corridors to monuments clear for unobstructed viewing appreciation and photographic opportunities;
- c. Maintain a simple and environmental-friendly landscape. Provide plants and trees wherever appropriate, to enhance and soften the built areas;
- d. Commercial billboards should not proliferate in a town center where a dominant monument is situated; Limit building signage throughout the second level of buildings around the monument; Cities, municipalities and provinces shall adopt these billboard and building signage regulations by passing local ordinances;

- e. Introduce creative design devices such as paved walkways, attractive ground cover and rows of tall trees to make the monument the main attraction of the site;
- f. The monument may be elevated on a mound or a platform to emphasize its importance;
- g. Use strong contrast between the monument and its background. This will enhance the monument as a focal point of site; and,
- h. Enclosing structures may be used to emphasize and protect the monument.

The scale of the figure of an outdoor monument should be kept to an ideal standard, which may be governed by the following:

Minimum	: Life-size
Maximum	: Twice the life-size
Landmark/Monumental structures	: More than the life-size

The scale would depend on the size of the open space where the monument shall be placed in relation to human perception. The larger the open space, the taller the monument. As a rule of thumb, no full-bodied monument must be smaller than life-size. The scales used by sculptors are usually one-and-a-half times the life-size or twice the life-size. These sizes, when placed on corresponding proportional pedestals, would appear life-size at an appropriate viewing distance. The over-all effect of the site should be an overwhelming experience. This feeling, thus, contributes to the effectiveness of the learning message the monument conveys.

**2. SITE AND ORIENTATION**

- A. SITE/SETTING – the area or territory where a monument is found or located. The setting is not only limited with the exact area that is directly occupied by the monument, but it extends to the surrounding areas whether open space or occupied by other structures as may be defined by the traditional or juridical expanse of the property.

Articles 1 and 6 of the International Charter for the Conservation and Restoration of Monuments and Sites or the Venice Charter, petitioner argues, also require the conservation of a monument’s setting:

ARTICLE 1. The concept of a historic monument embraces not only the single architectural work but also the urban or rural setting in which is found the evidence of a particular civilization, a significant development or a historic event. This applies not only to great works of art but also to more modest works of the past which have acquired cultural significance with the passing of time.

....

ARTICLE 6. The conservation of a monument implies preserving a setting which is not out of scale. Wherever the traditional setting exists, it must be kept. No new construction, demolition or modification which would alter the relations of mass and colour must be allowed.

Again, textually, nothing in Republic Act Nos. 4846, 7356, and 10066 provides that the “physical integrity” of a historical or cultural property includes its sightlines and settings. As for the National Historical Commission of the Philippines’ Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages, they do not have any legal effect. It has not been shown that these Guidelines were published<sup>80</sup> or that a copy was deposited in the University of the Philippines Law Center.<sup>81</sup>

Assuming that these Guidelines have the force of law, they allow for “urban renewal” of the site surrounding a monument. In this case, there is resistance against this “urban renewal” considering that Torre de Manila is the first high-rise building visible at the Rizal Monument’s backdrop. However, as submitted by the National Historical Commission of the Philippines during the hearing on August 27, 2014 conducted by the Senate Committee on Education, Arts and Culture, there is no law prohibiting the construction of Torre de Manila.

Further, the Venice Charter has not been concurred in by at least two-thirds of all the members of the Senate.<sup>82</sup> Hence, its provisions have no legal effect in this jurisdiction.

## IX

Curiously, however, in spite of an acknowledgement that neither the National Historical Commission of the Philippines’ Guidelines nor the Venice Charter has legal effect, the dissent of Justice Jardeleza suggests that the Venice Charter should be given weight in legal interpretation. Thus:

Similarly, neither can the Venice Charter be invoked to prohibit the construction of the Torre de Manila project. The Venice Charter provides, in general terms, the steps that must be taken by State Parties for the conservation and restoration of monuments and sites, including these properties’ setting. It does not, however, rise to a level of enforceable law. There is no allegation that the Philippines has legally committed to observe the Venice Charter. Neither are we prepared to declare that its principles are norms of general or customary international law which are binding on all states. We further note that the terms of both the NHCP Guidelines and the Venice Charter appear hortatory and do not claim to be sources of legally enforceable rights. These documents only urge (not

<sup>80</sup> *Tañada v. Tuvera*, 230 Phil. 528, 535 (1986) [Per J. Cruz, En Banc].

<sup>81</sup> ADM. CODE, Book VII, Chapter 2, sec. 3(1) provides:  
SECTION 3. *Filing*. — (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of any sanction against any party or persons.

<sup>82</sup> CONST. art. VII, sec. 21 provides:  
SECTION 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

require) governments to adopt the principles they espouse through implementing laws.

Nevertheless, the Venice Charter and the NHCP Guidelines, along with various conservation conventions, recommendations and resolutions contained in multilateral cooperation and agreements by State and non-state entities, do establish a significant fact: **At the time of the enactment of our Constitution in 1987, there has already been a consistent understanding of the term “conservation” in the culture, history and heritage context as to cover not only a heritage property’s physical/tangible attributes, but also its settings (e.g., its surrounding neighborhood, landscapes, sites, sight lines, skylines, visual corridors and vista points).**

The setting of a heritage culture, site or area is defined as “the immediate and extended environment that is part of, or contributes to, its significance and distinctive character.” It is also referred to as “the surroundings in which a place is experienced, its local context, embracing present and past relationships to the adjacent landscape.” It is further acknowledged as one of the sources from which heritage structures, sites and areas “derive their significance and distinctive character.” Thus, any change to the same can “substantially and irretrievably affect” the significance of the heritage property.

The concept of settings was first formalized with the Xi’an Declaration on the Conservation of the Settings of Heritage Structures, Sites and Areas adopted by the 15<sup>th</sup> General Assembly of ICOMOS on October 21, 2005. The concept itself, however, has been acknowledged decades before, with references to settings, landscapes, and surroundings **appearing as early as 1962.**

To reiterate, our examination of the various multilateral and international documents on the matter shows a generally-accepted and oft-repeated understanding of “heritage conservation” as covering *more* than a cultural property’s physical attributes to include its surroundings and settings. This “understanding” had, unarguably, already acquired “term of art” status even before the enactment of our Constitution in 1987. *Verba artis ex arte*. Terms of art should be explained from their usage in the art to which they belong.

We hold, absent proof of a clear constitutional expression to the contrary, that the foregoing understanding of heritage conservation provide more than sufficient justification against *a priori* limiting the plenary power of Congress to determine, through the enactment of laws, the scope and extent of heritage conservation in our jurisdiction. Otherwise put, the Congress *can* choose to legislate that protection of a cultural property extends beyond its physical attributes to include its surroundings, settings, view, landscape, dominance and scale. This flows from the fundamental principle that the Constitution’s grant of legislative power to Congress is plenary, subject only to certain defined limitations, such as those found in the Bill of Rights and the due process clause of the Constitution.<sup>83</sup> (Emphasis in the original, citations omitted)

---

<sup>83</sup> J. Jardeleza’s Dissenting Opinion.

Unless we are ready to supplant the Congress or the National Historical Commission of the Philippines' efforts to discharge their legal process, we cannot impose an interpretation which precisely has not ripened into a legal obligation. Neither can we create international norm of a binding character. We are not the part of the State that participates in the articulation of *opinio juris* for purposes of international customary law. Neither do we, as a Court, participate in the crafting or concurrence of treaties. To do all these in the guise of the Latin principle *verba artis in arte* is to misplace the use of that canon. Terms of art will apply only when there is an art or profession to which it belongs. "Terms of art" is jargon to a profession or art mediums. It does not apply for a normative interpretation that is still contested.

## X

The core of the dissent is built on the interpretation that the Comprehensive Land Use Plan and Zoning Ordinance, or Ordinance No. 8119, "provides for a clear specific duty on the part of the City of Manila to regulate development projects insofar as these may adversely affect the view, vista, sightline or setting of a cultural property within the city."<sup>84</sup> Specifically cited were Sections 47 and 48 of Ordinance No. 8119, which allegedly require that the sightlines and settings of a "heritage resource" be free from visual obstruction, as well as Sections 45 and 53 dealing with environmental conservation and protection standards.

I disagree.

Section 47 provides:

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

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

1. Sites with historic buildings or places shall be developed to conserve and enhance their heritage values.
2. Historic sites and facilities shall be adaptively re-used.
3. Any person who proposes to add, to alter, or partially demolish a designated heritage property will require the approval of the City Planning and Development Office (CPDO) and shall be required to prepare a heritage impact statement that will demonstrate to the satisfaction of CPDO that the proposal will not adversely impact the

---

<sup>84</sup> J. Jardeleza's Dissenting Opinion.

heritage significance of the property and shall submit plans for review by the CPDO in coordination with the National Historical Institute (NHI).

4. Any proposed alteration and/or re-use of designated heritage properties shall be evaluated based on criteria established by the heritage significance of the particular property or site.
5. Where an owner of a heritage property applies for approval to demolish a designated heritage property or properties, the owner shall be required to provide evidence to satisfaction that demonstrates that rehabilitation and re-use of the property is not viable.
6. Any designated heritage property which is to be demolished or significantly altered, shall be thoroughly documented for archival purposes with a history, photographic records, and measured drawings, in accordance with accepted heritage recording guidelines, prior to demolition or alteration.
7. Residential and commercial infill in heritage areas will be sensitive to the existing scale and pattern of those areas, which maintains the existing landscape and streetscape qualities of those areas, and which does not result in the loss of any heritage resources.
8. Development plans shall ensure that parking facilities (surface lots, residential garages, stand-alone parking garages and parking components as parts of larger developments) are compatibly integrated into heritage areas, and/or are compatible with adjacent heritage resources.
9. Local utility companies (hydro, gas, telephone, cable) shall be required to place metering equipment, transformer boxes, power lines, conduit, equipment boxes, piping, wireless telecommunication towers and other utility equipment and devices in locations which do not detract from the visual character of heritage resources, and which do not have a negative impact on its architectural integrity.
10. Design review approval shall be secured from the CPDO for any alteration of the heritage property to ensure that design guidelines and standards are met and shall promote preservation and conservation of the heritage property.

Section 47, paragraph 7 does not apply in this case. The provision requires that “residential and commercial infill *in heritage areas* will be sensitive to the existing scale and pattern of those areas which maintains the existing landscape and streetscape qualities of those areas, and which does not result in the loss of any heritage resources.” Torre de Manila is *not within* a heritage area but within a university cluster zone.

Neither does Section 47, paragraph 9 apply. It is addressed to “local utility companies (hydro, gas, telephone, cable)” who are “required to place metering equipment, transformer boxes, power lines, conduit, equipment

boxes, piping, wireless telecommunication towers and other utility equipment and devices in locations which do not detract from the visual character of heritage resources, and which do not have negative impact on its architectural integrity.” DMCI Project Developers, Inc. is not a local utility company. Neither is it placing any equipment within a historic site or facility.

Section 48, on the other hand, provides:

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

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

Furthermore, designs should consider the following:

1. Sites, buildings and facilities shall be designed and developed with regard to safety, efficiency and high standards of design. The natural environmental character of the site and its adjacent properties shall be considered in the site development of each building and facility.
2. The height and bulk of buildings and structures shall be so designed that it does not impair the entry of light and ventilation, cause the loss of privacy and/or create nuisances, hazards or inconveniences to adjacent developments.
3. Abutments to adjacent properties shall not be allowed without the neighbor's prior written consent which shall be required by the City Planning and Development Office (CPDO) prior to the granting of a Zoning Permit (Locational Clearance).
4. The capacity of parking areas/lots shall be per the minimum requirements of the National Building Code. These shall be located, developed and landscaped in order to enhance the aesthetic quality of the facility. In no case, shall parking areas/lots encroach into street rights-of-way and shall follow the Traffic Code as set by the City.
5. Developments that attract a significant volume of public modes of transportation, such as tricycles, jeepneys, buses, etc., shall provide on-site parking for the same. These shall also provide vehicular loading and unloading bays so as street traffic flow will not be impeded.

6. Buffers, silencers, mufflers, enclosures and other noise-absorbing materials shall be provided to all noise and vibration-producing machinery. Noise levels shall be maintained according to levels specified in DENR DAO No. 30 – Abatement of Noise and Other Forms of Nuisance as Defined by Law.
7. Glare and heat from any operation or activity shall not be radiated, seen or felt from any point beyond the limits of the property.
8. No large commercial signage and/or pylon, which will be detrimental to the skyline, shall be allowed.
9. Design guidelines, deeds of restriction, property management plans and other regulatory tools that will ensure high quality developments shall be required from developers of commercial subdivisions and condominiums. These shall be submitted to the City Planning and Development Office (CPDO) for review and approval.

With respect to Section 48, it sets standards for project development to be followed within a “specific site” and its “adjacent properties,” i.e., within a specific cluster zone. Torre de Manila and the Rizal Monument are not adjacent or contiguous properties, nor do they belong to the same cluster zone. Neither is there an existing complaint that DMCI Project Developers, Inc. violated the “environmental character or limitations” of the cluster zone where Torre de Manila is constructed. Section 48, therefore, is inapplicable.

The dissent also adds as legal bases for granting mandamus paragraph 1 of Section 45 as well as Section 53 of Ordinance No. 8119 which allegedly provide for “specific operable norms and standards that protect ‘views’ with ‘high scenic quality’”:<sup>85</sup>

SEC. 45. Environmental Conservation and Protection Standards. – It is the intent of the City to protect its natural resources. In order to achieve this objective, all development shall comply with the following regulations:

1. Views shall be preserved for public enjoyment especially in sites with high scenic quality by closely considering building orientation, height, bulk, fencing and landscaping.

....

SEC. 53. Environmental Compliance Certificate (ECC). - Notwithstanding the issuance of zoning permit (locational clearance) Section 63 of this Ordinance, no environmentally critical projects nor projects located in environmentally critical areas shall be commenced, developed or operated unless the requirements of ECC have been complied with.

<sup>85</sup> J. Jardeleza’s Dissenting Opinion.

Sections 45 and 53 of Ordinance No. 8119 concern environmental conservation and protection standards, specifically, the protection of natural resources. Section 45, paragraph 1 relates to protecting views of natural resources. Section 53 requires project developers to secure environmental compliance certificates before commencing or developing environmentally critical projects or projects located in environmentally critical areas.

The Rizal Monument is not a natural resource. There is no allegation that Torre de Manila is an environmentally critical project or is located in an environmentally critical area. To apply Sections 45 and 53 of Ordinance No. 8119, as the dissent suggests, is patently strained.

## XI

The second and third requisites for the issuance of a writ of mandamus are likewise absent in this case. Respondents have no legal duty to petitioner Knights of Rizal.

The respondent, DMCI Project Developers, Inc. is a private corporation with no legal obligation to petitioner Knights of Rizal. As for public respondents National Historical Commission of the Philippines, the National Museum, the National Commission for Culture and the Arts, and the City of Manila, they are under no legal obligation to stop the construction of Torre de Manila for, as discussed, there is no law requiring the protection of a historical or cultural property's sightline or setting.

## XII

Likewise absent is the fourth requisite. The act sought to be performed in this case is not ministerial.

An act is ministerial if the "duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his [or her] own judgment upon the propriety or impropriety of the act done."<sup>86</sup> On the other hand, an act is discretionary if it "gives [the public officer] the right to decide how or when the duty shall be performed."<sup>87</sup>

For respondent DMCI Project Developers, Inc., it is a private corporation not legally or contractually bound to perform any act in favor of petitioner Knights of Rizal.

---

<sup>86</sup> *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 707 (2010) [Per J. Bersamin, En Banc], citing *Espiridion v. Court of Appeals*, G.R. No. 146933, June 8, 2006, 490 SCRA 273.

<sup>87</sup> *Id.*

For respondents National Historical Commission of the Philippines, National Commission for Culture and the Arts, and the National Museum, they have no duty under our present laws to stop the construction of any structure that obstructs the sightline, setting, or backdrop of a historical or cultural heritage or resource. There is no act, whether ministerial or discretionary, that can be required of them.

For respondent City of Manila, the act sought to be performed is discretionary, not ministerial. Under Ordinance No. 8119, the City of Manila is empowered to decide whether or not to grant project developers, such as DMCI Project Developers, Inc., a variance allowing the construction of a structure beyond the prescribed floor-to-area ratio for a specific cluster zone.<sup>88</sup> Here, the City of Manila, through its Sangguniang Panlungsod, decided to grant DMCI Homes, Inc. a variance that allowed the developer to construct a building beyond the floor-to-area ratio of four (4) for structures within a university cluster zone.

Therefore, I disagree with the proposed disposition of this case by the dissent. Justice Jardeleza proposed to dispose of the case with this fallo:

**WHEREFORE**, let a writ of mandamus be issued in this case. Public respondent City of Manila, through its representatives, is directed to **RE-EVALUATE WITH DISPATCH** the permits and variance issued in favor of DMCI-PDI's Torre de Manila project, **DETERMINE APPLICABILITY AND/OR COMPLIANCE WITH** the standards under Sections 45, 53, 47 and 48, and the provisions under Section 60 (in relation to the grant of a variance), of Ordinance No. 8119 and **GRANT THE APPROPRIATE RELIEFS/SANCTIONS** under the law. The

<sup>88</sup> Manila Ordinance 8119, sec. 60 provides:

SEC. 60. Deviations. – Variances and exceptions from the provisions of this Ordinance may be allowed by the Sangguniang Panlungsod as per recommendation from the Manila Zoning Board of Adjustment and Appeals (MZBAA) through the Committee on Housing, Urban Development and Resettlements only when all the following terms and conditions are obtained/existing:

1. Variance – all proposed projects which do not conformed with the prescribed allowable Land Use Intensity Control (LUIC) in the zone.

- a. The property is unique and different from other properties in the adjacent locality and because of its uniqueness, the owner/s cannot obtain a reasonable return on the property.

This condition shall include at least three (3) of the following provisions:

- Conforming to the provisions of the Ordinance will cause undue hardship on the part of the owner or occupant of the property due to physical conditions of the property (topography, shape, etc.), which is not self created.
- The proposed variance is the minimum deviation necessary to permit reasonable use of the property.
- The variance will not alter the physical character of the district/zone where the property for which the variance sought is located, and will not substantially or permanently injure the use of the other properties in the same district or zone.
- That the variance will not weaken the general purpose of the Ordinance and will not adversely affect the public health, safety, and welfare.
- The variance will be in harmony with the spirit of this Ordinance.

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.<sup>89</sup>

First, ordering the City of Manila to “re-evaluate with dispatch the permits issued in favor of [DMCI Project Developers, Inc.]” is a futile exercise. It does not solve the constitutional issue presented in this case: whether the sightlines and settings of historical or cultural heritage or resources are protected under Sections 15 and 16, Article XIV of the Constitution.

Second, the grant of a building permit or variance is a discretionary act and, in this case, the discretion has already been exercised.

Third, in awaiting the final decision on the re-evaluation process, we are leaving to the City of Manila the effectivity of the temporary restraining order we issued. We are effectively delegating our power to a local government unit, in avoidance of our duty to finally decide this case.

### XIII

There were other plain, speedy, and adequate remedies in the ordinary course of law available to petitioner Knights of Rizal. As earlier discussed, the Petition should have been filed before the regional trial court to resolve the factual issues involved and for a more adequate and exhaustive resolution of this case.

For instance, questions that can be raised regarding the approval of the variance of the construction from the standard Floor Area Ratio were contained in existing ordinances. These questions were revealed during the oral arguments in this case. Thus:

**JUSTICE LEONEN:**

You are not aware. Okay, now, in the zoning permit if you look at the floor area, it says, “97,549 square meters,” do you confirm this Counsel?

**ATTY. LAZATIN :**

I confirm that, Your Honor.

**JUSTICE LEONEN :**

And the land area is 7,475 square meters. I understand that this includes right of way?

---

<sup>89</sup> J. Jardeleza’s Dissenting Opinion.

**ATTY. LAZATIN:**

That's correct, Your Honor, until an additional lot was added that made the total project area to be 7,556.

**JUSTICE LEONEN:**

Okay. So, the floor area divided by the land area is 13.05, is that correct? You can get a calculator and compute it, it's 13.05 correct?

**ATTY. LAZATIN:**

That's correct, Your Honor.

**JUSTICE LEONEN:**

That is called the FAR?

**ATTY. LAZATIN:**

Yes, Your Honor.

**JUSTICE LEONEN:**

Yes, and therefore, when the zoning permit was issued, there was already a variance that was acknowledged by the City Planning Development Office of the City of Manila, is that correct?

**ATTY. LAZATIN:**

That's right, Your Honor.

**JUSTICE LEONEN:**

So, in other words, Mr. Resty Rebong approved the application because it fell within four and the variance, is this correct?

**ATTY. LAZATIN:**

That's our impression, Your Honor.

**JUSTICE LEONEN:**

May I know what the Ordinance No. or resolution was that authorized Resty Rebong to approve the variance?

**ATTY. LAZATIN:**

My recollection, Your Honor, it is Section 77 of the . . .

**JUSTICE LEONEN :**

No, I'm sorry, June 19, 2012, is there a Sangguniang Panlungsod Resolution as of June 19, 2012 because Resty Rebong already said that the variance is okay. Is there a resolution from the City Council on June 19, 2012 approving the variance?

**ATTY. LAZATIN :**

There was none, Your Honor.

**JUSTICE LEONEN:**

Again, here, I'm confused. The City Planning and Development Officer approved 97,549 which already includes a variance, but [o]n June 19 when he approved it in 2012, there was no resolution, nor ordinance from the City Council allowing the variance.

**ATTY. LAZATIN:**

There was none yet at that time, Your Honor.

**JUSTICE LEONEN:**

As a matter of fact the variance was not there the following month, correct?

**ATTY. LAZATIN :**

No, Your Honor.

**JUSTICE LEONEN:**

In November 2012, there was no variance approval, correct?

**ATTY. LAZATIN:**

None ...

**JUSTICE LEONEN:**

When DMCI was building the building there was no variance, was that not correct?

**ATTY. LAZATIN:**

That's correct, Your Honor.

**JUSTICE LEONEN:**

And the only time that there was a variance that was granted, was in 2013, I am sorry 20 . . . ?

**ATTY. LAZATIN:**

2014, Your Honor . . .

**JUSTICE LEONEN:**

2014?

**ATTY. LAZATIN:**

Yes, Your Honor.

**JUSTICE LEONEN:**

So, two years after this Resty Rebong approved the zoning permit with the variance but the approval of the variance came later?

**ATTY. LAZATIN:**

That's correct, Your Honor. If I may be allowed to explain . . .

**JUSTICE LEONEN:**

Can we go to Section 62 of the Ordinance, I am sorry Section 63, you mentioned 62 awhile ago but I think you meant Section 63 of the Manila Comprehensive Land Use Plan and Zoning Ordinance of 2006. There it is, it's projected counsel, because I was confused based upon the questioning of Justice Dado Peralta and I am always confused when he asked questions, that's why I am asking. Now in Section 63 of the Ordinance, it clearly says there, "City Planning Development Officer provides a clearance for all conforming uses and, in cases of variances and exception from the Sangguniang Panlungsod as per recommendation from the MZBAA through the committee on Housing Urban Development and Resettlement prior to conducting any business activity or construction on their property/land." So, in other words, the Ordinance, said that it will not only be forthcoming from the Sangguniang Panlungsod, there has to be a recommendation from the Manila Zoning Board of Adjustment



Appeals who in turn will get a recommendation through the Committee on Housing Urban Development and Resettlement, is this not correct?

**ATTY. LAZATIN:**

That's correct, Your Honor.

**JUSTICE LEONEN:**

And prior to means "prior to," "before," "antecedent to," conducting any business activity or construction on their property or lot, correct, Counsel?

**ATTY. LAZATIN:**

Yes, Your Honor, may I be?

**JUSTICE LEONEN:**

Did you sell your property before the action of the Sangguniang Panlungsod?

**ATTY. LAZATIN:**

Your Honor, there is a difference between the approval of the . . . (interrupted)

**JUSTICE LEONEN:**

Did you build prior to the approval of the Sangguniang Panlungsod as per recommendation of the Manila Zoning Board of Adjustment Appeals?

**ATTY. LAZATIN:**

Your Honor, if I may be allowed to . . . ?

**JUSTICE LEONEN:**

No, I have a pending question, did you build prior to the issuance of that resolution or ordinance allowing the variance?

**ATTY. LAZATIN:**

We build, Your Honor, in accordance with what was permitted, Your Honor.

**JUSTICE LEONEN:**

I am again a bit curious. Section 3(J) of Republic Act 3019, the Anti-Graft and Corruption Practices Law, it says, "knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage," that's a crime, correct?

**ATTY. LAZATIN:**

Your Honor, may I be allowed to explain?

**JUSTICE LEONEN:**

No, I'm just confirming if there is such a Section 3, paragraph (J)?

**ATTY. LAZATIN:**

Your Honor, right now I cannot confirm that, Your Honor.

**JUSTICE LEONEN:**

Okay.

**ATTY. LAZATIN:**

May I just be allowed to explain, Your Honor . . .

**JUSTICE LEONEN:**

Just to clarify the way it went, there was a zoning clearance, on June 2012, the zoning clearance granted a variance, that variance had not yet been approved by the MZBAA, nor the Sangguniang Panlungsod, and DMCI sold property, mobilized in October, pre-sold. And you built starting November, but the Ordinance approving the variance only came in 2013, is that correct?

**ATTY.LAZATIN:**

That's correct, Your Honor, but may I be allowed to explain, Your Honor, please?

**JUSTICE LEONEN:**

Yes.

**ATTY. LAZATIN:**

Your Honor, one, you only go to the MZBAA, Your Honor, when your permit request for zoning permit or locational clearance is denied. In this case, it was granted so, there was no opportunity for us to go to the MZBAA . . . (interrupted)

**JUSTICE LEONEN:**

Counsel . . . (interrupted)

**ATTY.LAZATIN:**

Secondly, allow me to complete, Your Honor, allow me to complete, please, very important, Your Honor.

**JUSTICE LEONEN:**

Allow me to ask questions because I am the one that is going to vote on this case. Now, the second part of Section 63 it says there, "prior to conducting any business activity," can you [c]ite to me an ordinance or a section in an Ordinance which says, "the only time that you go to the MZBAA, is when the zoning permit is denied" because I am showing you Section 63?

**ATTY. LAZATIN:**

Your Honor, you appeal to the MZBAA, Your Honor, for a variance. So if it is granted, what will you appeal? And here, in addition, Your Honor, if I may be allowed to complete my answer, Your Honor, also the records that we have submitted it was the position of the City Planning Development Officer that the executive branch of Manila suspended the Ordinance and they were implementing the Building Code and in fact, Your Honor, they submitted and gave us a copy, Your Honor, of the opinion of the City Legal Officer that it was not necessary and at that time, Your Honor, all the objections to the project were based on heritage, Your Honor.<sup>90</sup>

<sup>90</sup> TSN dated August 11, 2015, pp. 48-54.

However, due process requires that these matters be properly pleaded, alleged, and traversed in the proper action.

Petitioner Knights of Rizal could not effectively assail the issuance of a variance to DMCI Project Developers, Inc. in an action in the Supreme Court. Under Section 77 of Ordinance No. 8119, the remedy of filing an opposition to the application for variance before the Manila Zoning Board of Adjustments and Appeals was available to petitioner Knights of Rizal. Section 77 of the Manila Zoning Ordinance provides:

SEC. 77. Action on Complaints and Opposition. – A verified complaint for any violations of any provision of the Zoning Ordinance or of any clearance or permits issued pursuant thereto shall be filed with the [Manila Zoning Board of Adjustments and Appeals].

However, oppositions to application for clearance, variance or exception shall be treated as a complaint and dealt with in accordance with the provision of this section.

Given the foregoing, a writ of mandamus against the construction of Torre de Manila does not lie.

With petitioner having no clear legal right to the relief sought, there can be no great or irreparable injury<sup>91</sup> to petitioners and the temporary restraining order issued by this Court has no solid ground. Thus, the temporary restraining order must be lifted.

#### XIV

Even with the consciousness of his impending death, Jose Rizal did not want to be aggrandized. He did not want to be buried and remembered in the way that the petitioner wants him remembered. He wanted a simple grave in Paang Bundok marked with his name, a simple cross and possibly a fence. He did not give instructions for foreign artists to erect his likeness. He probably did not want that likeness to be clothed in an overcoat so that we remember him in the bosom of our colonial masters. He did not leave instructions that his name be used for a national shrine.

---

<sup>91</sup> RULES OF COURT, Rule 58, sec. 5 partly provides:

SECTION 5. *Preliminary Injunction Not Granted Without Notice; Exception.* — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue ex parte a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

Jose Rizal did not even want his death anniversary celebrated.

Like Elias in *El Filibusterismo*, Rizal wanted to be remembered as an ordinary person, whose death was meaningful because it was the result of his courage to do what was right no matter how fatal the consequences.

Rizal should be valorized because of his humility. He should not be venerated like a saint or a god whose shrines erected in his honor is so sacred that it is protected by putative knights in a country that prohibits titles of royalty or nobility.

I suspect that Jose Rizal would have been uncomfortable being in a pantheon of heroes and with a stature that, in the submissions of the petitioner and the Solicitor General, approaches that of a divinity.

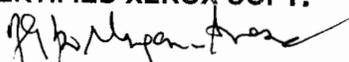
The memory of our heroes symbolized by shrines erected in their honor should not be granted so imperial a status so as to arbitrarily waste the material and physical spaces and natural resources of adjoining properties. This is inconsistent with the egalitarian society they may have imagined. It does not square with a more egalitarian view of social justice.

We cannot immortalize our heroes by privileging an angle for a photograph of our shrines while sacrificing the value of the rule of law for the society at present. Good citizenship requires that we never venerate our heroes without any understanding of their context. Rizal was a Filipino, whose principles and convictions gave them the courage to speak truth to power no matter how fatal the consequences. He will still only be one among many.

It is this courage and this humility that we should remember from Rizal's life. These values should be lived. They should persist and survive beyond the frame of a bad photograph.

**ACCORDINGLY**, I vote to **LIFT** the Temporary Restraining Order and **DISMISS** the Petition.

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

**CERTIFIED XEROX COPY:**  
  
**FELIPA B. ANAMA**  
CLERK OF COURT, EN BANC  
SUPREME COURT