

**PILO MILITANTE, PETITIONER, VS. HON. COURT OF APPEALS,
FORMER SIXTH DIVISION, NATIONAL HOUSING AUTHORITY,
REPRESENTED BY ITS PROJECT MANAGER, ANNABELLE D.
CARANGDANG, AND THE RE...**

G.R. No. 107040. April 12, 2000

Ponente: PUNO, J.

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PUNO, J.:

Petitioner files this petition for review of the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 25429[1] upholding the constitutionality of Presidential Decree (P.D.) No. 1315.

Petitioner Pilo Militante is the registered owner of three (3) contiguous parcels of land with an aggregate area of 1,590 square meters in Balintawak, Caloocan City. The three parcels are covered by TCT Nos. 53066-A, 53067 and 53068, all derived from TCT No. 71357 issued by the Register of Deeds of Caloocan City. Twenty-four (24) squatter families live in these lots.

In 1975, President Marcos issued Presidential Decree (P.D.) No. 1315[2] expropriating forty (40) hectares of land in Bagong Barrio, Caloocan City, covered by TCT Nos. 70298, and 73960, and portions of TCT Nos. 71357, 2017 and 2018. Section 1 of said P.D. reads:

"Section 1. The real properties covered by Transfer Certificate of Title Nos. 70289, 73960 and a portion of 71357 identified as Lot Nos. 3593, 3594 and 3629 in the name of Maria B. Castro and Lot No. 3206 in the name of Bonifacio Co as Tax Declaration No. 25395 with an aggregate area of 403,799 square meters, more or less; Lot Nos. 3591 and 3592 containing a total area of 1440 square meters in the name of Abdon Chan as per Tax Declaration Nos. 24853 and 24854 and Lot Nos. 3603, 3605 and 3607 containing a combined area of 1,590 square meters in the name of Pio [sic] Militante as per Tax Declaration No. 24876 all of which were previously covered by Transfer Certificate [of] Title No. 71357 and the adjacent real properties covered by Transfer Certificates of Title No. 2017 and 2018 registered in the name Leonora Carriedo containing an area of 141,133 square meters, more less and all located at Bagong Barrio, Caloocan City, Metro Manila, having been identified as a blighted area and included in the SIR Program established under Letters of Instructions No. 555 and ZIP Program as provided by Executive Order No. 6-77 dated 21 July 1977 of the Governor, Metropolitan Manila, are hereby declared expropriated. The National Housing Authority hereinafter referred to as the "Authority" is designated administrator for the national government and is authorized to immediately take possession, control and disposition of the expropriated properties with the power of demolition of their improvements. Pursuant thereto, the Authority with the government of Caloocan City and in consultation with the Metro Manila Commission shall evolve and implement a comprehensive development plan for the condemned properties."

The land expropriated was identified in the decree as a slum area that required the upgrading of basic facilities and services and the disposal of the lots to their bona fide occupants in accordance with the national Slum Improvement and Resettlement (SIR) Program and the Metro Manila Zonal Improvement Program (ZIP).[3] It set

aside P40 million as the maximum amount of just compensation to be paid the landowners.[4]

The NHA, as the decree's designated administrator for the national government, undertook the implementation of P.D. 1315 in seven (7) phases called the Bagong Barrio Project (BBP). The properties covered by Phases 1 to 6 were acquired in 1978 and 1979. BBP Phase 7, which includes petitioner's land, was not among those acquired and paid for in 1978-1979.

On September 11, 1979, Proclamation No. 1893 declared the entire Metropolitan Manila area as Urban Land Reform Zone. Proclamation No. 1893 was amended on May 14, 1980 by Proclamation No. 1967 which identified 244 sites in Metropolitan Manila as Areas for Priority Development and Urban Land Reform Zones.

Meanwhile, on June 2, 1978, P.D. No. 1396 created the Department of Human Settlements (DHS) and placed the NHA under the supervision of said Department.[5] On February 7, 1981, Executive Order No. 648 transferred the regulatory functions of the NHA to the Human Settlements Regulatory Commission (HSRC), a quasi-judicial body attached to the DHS.[6]

On September 24, 1981, petitioner wrote the HSRC seeking a declaration of non-coverage from the Urban Land Reform Program of the government. On October 2, 1981, HSRC Commissioner Raymundo R. Dizon, Jr. issued a certificate declaring petitioner's lots "outside the declared Urban Land Reform Zone." The certification reads as follows:

"Mr. Pilo Melitante [sic]
110 G. de Jesus St.
Caloocan City

Re: Subject : Certification

Land Description : Lot No. 3603, 3605, 3607 of the Cadastral Survey of Caloocan Cadastral Case No. 34
GLRO Cadastral Record No. 1606

a. Tax Decl. No. : 52773

b. Location : G. de Jesus St., Caloocan City

c. Title : 53066, 53067, 53068

d. Owner Pilo Melitante [sic]

Dear Mr. Militante:

Anent your request dated 24 September 1981 concerning the abovementioned subject property, please be informed that said parcel of land is located outside the declared Urban Land Reform Zone (LURZ) [sic].

Very truly yours,

RAYMUNDO R. DIZON, JR.
Commissioner."[7]

With this certificate, petitioner asked the NHA to relocate the squatters on his land. Acting on the request, General Gaudencio Tobias, NHA General Manager, sent a letter dated October 6, 1981 to Mayor Macario Asistio, Jr., of Caloocan City, to conduct a census of the families occupying petitioner's lots.[8]

The NHA called the squatters for a dialogue "to look into the possibility of amicably settling the eviction problem and/or to find out why a clearance should be issued or not for the removal/ demolition of all the illegal structures in the said property." [9] The squatters did not attend the meeting. In view of their failure to attend, Joaquin

Castano, Acting Division Manager, Resettlement Division, NHA, wrote a memorandum to the Department Manager, Resettlement Department, NHA, recommending the issuance of a demolition clearance.[10]

On January 21, 1982, NHA General Manager Tobias granted clearance to dismantle and remove all illegal structures on petitioner's property within three (3) months from receipt of the order. Clearance was also granted for the relocation of the 24 families to the Sapang Palay Resettlement Project. The clearance was addressed to Mayor Asistio and reads as follows:

"Sir:

This has reference to the letter of Mr. Pilo Melitante[sic] which was received by our Office on 24 September 1981 regarding his request for the relocation of the families presently occupying his property situated at G. de Jesus Street, Balintawak, that City, covered by TCT Nos. 53066, 53067 and 53068, subject of 1st Indorsement of City Engineer Jose Uson.

Evaluation of the request shows the same to merit favorable consideration. In view thereof, clearance is hereby given that Office to dismantle and/or remove all the illegal structures from the above-cited properties within three (3) months upon receipt hereof, pursuant to the provisions of LOIs 19 and 19-A, and its implementing directives from the Office of the President.

A. Qualified for government resettlement assistance to Sapang Palay Resettlement Project:

[list of names of the 24 occupants]

B. Disqualified from government resettlement assistance

- NONE -

This clearance shall also cover all other structures on subject premises whose owners refused to be interviewed and those who entered the same after the conduct of census survey in 1981.

May we request that the affected families be served written notices given them at least fifteen (15) days within which to vacate voluntarily and/or prepare for their relocation, copies of which must be furnished this Office.

To ensure the smooth conduct of relocation operation thereat, we further request that you inform this Authority at least one (1) week ahead of the scheduled date of implementation of this clearance so we could send our representative to coordinate the same.

Very truly yours,

G. V. TOBIAS

Maj. Gen., AFP (Ret)

General Manager."[11]

The demolition did not take place. In a letter dated September 16, 1982, General Tobias inquired from Mayor Asistio whether Caloocan City had plans of developing petitioner's properties in the Bagong Barrio Project. On December 13, 1982, Mayor Asistio replied that "considering the said properties are private in character, the City has no plans presently or in the immediate future to develop or underwrite the development of said properties."[12]

Four (4) years later, in 1986, BBP Phase 7 was listed as among the priority projects for implementation under the government's Community Self-Help Program.[13] The NHA, through General Tobias, approved an emergency fund of P2 million for the acquisition of petitioner's lots. NHA started negotiations with petitioner. In 1987, petitioner, through an authorized representative, made an initial offer of P200.00 per square meter. The NHA

made a counter-offer of P175.00 per square meter. Petitioner increased his price to P1,000.00 and later to P3,000.00. NHA General Manager Raymundo R. Dizon, Jr. informed petitioner that NHA's maximum offer was P500.00. This was rejected by petitioner, through his lawyer, in a letter dated March 20, 1989.[14]

On September 8, 1990, petitioner, through counsel, requested for a revalidation of his demolition clearance and relocation of the squatters.[15]

On January 15, 1991, NHA General Manager Monico Jacob revalidated the demolition clearance and informed Mayor Asistio that the NHA was making available enough serviced home lots in Bagong Silang Resettlement Project for the 24 families. The letter of revalidation reads: justice

"Honorable Macario C. Asistio, Jr.

Mayor

Caloocan City

Re: Revalidation of Letter-Advice on the Relocation and Resettlement of Twenty-four (24) Families from G. de Jesus St., Balintawak, Caloocan City.

Dear Mayor Asistio,

This has reference to the twenty-four (24) squatter families from G. de Jesus St., Balintawak, Caloocan City for relocation and resettlement by your City pursuant to the authority vested by LOIs 19, 19-A and 691.

Finding the documents submitted by your City to NHA to be in order, the provisions of the aforementioned LOIs and the implementing directive from the Office of the President on squatter relocation and resettlement may be enforced.

In accordance with the existing provisions of LOI 19 that indigent families be given resettlement assistance, we are advising you that the National Housing Authority is making available enough serviced homelots in Bagong Silang Resettlement Project for twenty-four (24) families qualified for resettlement assistance per attached approved master list.

We are sending our NHA representatives to cause the accomplishment and issuance of the necessary Entry Passes for the families going to our resettlement project and to provide technical assistance and monitor your relocation operation.

We trust that the established policies, procedures and guidelines on squatter prevention and resettlement including the conduct of information drive, inter-agency coordination and the issuance of notices to affected families, would be strictly observed to ensure peaceful, orderly and humane relocation operation.

Kindly be informed further that the effectivity of this letter advice is valid only for three (3) months from receipt hereof, subject to revalidation upon your recommendation if necessary.

Very truly yours,

MONICO V. JACOB

General Manager."[16]

Respondent Annabelle Carandang, NHA Project Manager in Bagong Barrio, refused to implement the clearance to eject the squatters on petitioner's land. At the conference of February 13, 1991, Carandang claimed that petitioner's land had already been declared expropriated by P.D. 1315.

Petitioner then filed with the respondent Court of Appeals a "Petition for Prohibition and Mandamus with Declaration as Inexistent and Unconstitutional Presidential Decree No. 1315" against the NHA and Carandang.

In a decision dated April 24, 1992, the respondent Court of Appeals dismissed the petition and held that petitioner failed to overcome the presumption of the decree's constitutionality.[17] Petitioner's motion for reconsideration was also denied on August 31, 1992.[18] Hence, this recourse where petitioner raises the following issues:

"I

WHETHER OR NOT RESPONDENT ANNABELLE CARANGDANG CAN BE COMPELLED TO EFFECT THE DIRECTIVE/ MEMORANDUM OF RELOCATION/ RESETTLEMENT SUBJECTING THE SAID 24 SQUATTER FAMILIES FROM UNLAWFULLY OCCUPYING PETITIONER'S SUBJECT PROPERTY WITHOUT DECLARING P.D. 1315 AS VOID AND UNCONSTITUTIONAL; AND

II

WHETHER OR NOT SAID P. D. 1315 AT LEAST UP TO THE EXTENT OF PETITIONER'S PROPERTIES ADVERSELY AFFECTED CAN BE DECLARED NULL AND VOID FOR BEING UNCONSTITUTIONAL."[19]

We deny the petition.

First. Petitioner is not entitled to the writ of prohibition. Section 2 of Rule 65 provides:

"Sec. 2. Petition for prohibition.—When the proceedings of any tribunal, corporation, board, or person, whether exercising functions judicial or ministerial, are without or in excess of its jurisdiction, or with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered commanding the defendant to desist from further proceedings in the action or matter specified therein.

x x x."[20]

Prohibition is a preventive remedy.[21] It seeks for a judgment ordering the defendant to desist from continuing with the commission of an act perceived to be illegal.

In the case at bar, petitioner does not pray that respondent Carangdang should be ordered to desist from relocating the squatters. What petitioner challenges is respondent Carangdang's refusal to implement the demolition clearance issued by her administrative superiors. The remedy for a refusal to discharge a legal duty is mandamus, not prohibition.

Second. The petitioner is not also entitled to a writ of mandamus. Section 3, Rule 65 provides:

"Sec. 3. Petition for mandamus.—When any tribunal, corporation, board, or person, unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy, and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered commanding the defendant, immediately or at some other specified time, to do the act required to be done to protect the rights of petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the defendant."[22]

Mandamus is a writ commanding a tribunal, corporation, board, or person to do the act required to be done when it or he unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, there being no other plain, speedy, and adequate remedy in the ordinary course of law.[23]

It is incumbent upon petitioner to show that he has a well-defined, clear and certain right to warrant the grant of

the writ of mandamus.[24] He failed to discharge this burden. The records show that there is no direct order from the NHA General Manager addressed to respondent Carangdang to evict the squatters and demolish their shanties on the subject property. The NHA demolition clearance issued by General Tobias on January 21, 1982 was addressed to Mayor Asistio, the mayor of Caloocan City. The clearance's revalidation by NHA General Manager Monico Jacob was likewise addressed to Mayor Asistio.

Furthermore, mandamus is an extraordinary remedy that may be availed of only when there is no plain, speedy and adequate remedy in the ordinary course of law. A petition for mandamus is premature if there are administrative remedies available to the petitioner.[25] If superior administrative officers could grant the relief prayed for, special civil actions are generally not entertained.[26] In the instant case, petitioner has not exhausted his administrative remedies. He may seek another demolition order from the NHA General Manager this time directly addressed to respondent Carangdang or the pertinent NHA representative. In fact, the Government Corporate Counsel[27] asserts that petitioner should have brought Carangdang's inaction to the attention of her superiors. There is therefore no extreme necessity to invoke judicial action as the administrative set-up could have easily corrected the alleged failure to act.[28] The General Manager, as Chief Executive Officer of the NHA, has the power of supervision over the operations and internal affairs of NHA.[29]

Third, Petitioner's procedure in assailing the constitutionality of P.D. No. 1315 is flawed. His principal concern is the relocation of the squatters on his land. If he could attain this aim, petitioner himself admits in his Petition that "there may not be a need for declaring P.D. No. 1315 null and void." [30] Indeed, petitioner assails P.D. No. 1315, purely out of pique against respondent Carangdang who refused to implement the demolition order of her superior. To use petitioner's own words, he has to attack the constitutionality of P.D. No. 1315 "to x x x break respondent Carangdang's hypocrisy and pretension." We hold that petitioner has no privilege to assail P.D. No. 1315 as unconstitutional to serve a petty purpose.

Moreover, the facts reveal that petitioner's land is not in clear danger of expropriation. P.D. No. 1315 was issued way back in 1975. It covered 40 hectares of land in Bagong Barrio, Caloocan City. Almost all of these 40 hectares had been expropriated as early as 1979 except the 1,590 sq. m. lot of petitioner. Considering this long lapse of time, it is doubtful if the government would still desire to expropriate petitioner's lot which only measures 1,590 sq. m.

There is another reason why petitioner's lot may no longer be expropriated by government. The land sought to be expropriated under P.D. No. 1315 is defined as an area "identified as a blighted area and included in the SIR Program" which means Slum Improvement and Resettlement Program. On October 2, 1981, however, HSRC Commissioner Dizon, Jr. certified that petitioner's lot is "outside the declared Urban Land Reform Zone." With this certification, there is reason to believe that taking petitioner's tiny lot of 1,590 sq. m. will serve no social purpose.

Finally, petitioner cannot blow hot and cold on the constitutionality of P.D. No. 1315. He did not question its constitutionality when it was decreed in 1975. In 1987, he even negotiated with NHA for the price of his land. Implicitly but clearly, he recognized the validity of the decree. The negotiation unfortunately fell and the government did not take any further step to expropriate his land. It was only in 1991 after respondent Carangdang refused to eject the squatters in petitioner's land that petitioner, out of pique, alleged that P.D. No. 1315 is constitutionally infirmed. A well recognized rule in constitutional law is that estoppel may operate to prevent a party from asserting that an act is unconstitutional.[31]

There is also merit to the cautionary words of the Solicitor General that to allow petitioner's flip-flopping stance "might spawn legal and social ramifications which cannot just be lightly ignored," [32] since almost all of the 40

hectare land covered by P.D. No. 1315 had been expropriated and awarded to the poor people of our society without their landowners challenging the validity of the decree. In his Concurring Opinion, our esteemed colleague, Mr. Justice Mendoza, denigrates this warning and cites *Alfonso v. Pasay City*[33] as authority for the view that "if property is taken by the government without the benefit of expropriation proceedings and is devoted to public use, such as a road, after many years, the property owner may no longer bring an action for recovery of his land, but may simply demand payment of just compensation for his land." [34] A careful reading of the *Alfonso* case, however, will show that this Court did not rule that the only remedy of an aggrieved landowner in such a situation is to "simply demand payment of just compensation." To be sure, this Court contemplated the remedy of restoring possession to the aggrieved landowner. If it did not order the remedy, it was only because it was no longer feasible as the lot involved had already been converted to a road. The exact ruling states:[35]

"As registered owner, he could bring an action to recover possession at any time because possession is one of the attributes of ownership of land. However, said restoration of possession by the City of Pasay is neither convenient nor feasible because it is now and has been used for road purposes. So, the only relief available is for the City of Pasay to make due compensation, which it could and should have done years ago since 1925."

In the case at bar, the landowners concerned may not opt for the right to be paid just compensation. The process is not an easy one and may take years especially in light of the budget difficulties of the government. We take judicial notice of the fact that the current budget deficit of the government amounts to P8.9 billion.

IN VIEW WHEREOF, the petition is dismissed. No costs.

SO ORDERED.

Davide, Jr., C.J., Melo, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

Bellosillo, J., no part, did not took part in deliberation.

Vitug, J., on official leave.

Kapunan, J., concur with the ponencia and with the Separate Opinion of J. Mendoza.

Purisma, JJ., join separate opinion of Mr. J. Mendoza.

Mendoza, J., see separate opinion.

De Leon, Jr., J., see dissenting and concurring opinion.

[1] Penned by Justice J. Campos, Jr. and concurred in by Justices A. Marigomen and F. Vailoces.

[2] Entitled "Providing for the Expropriation of a Landed Estate Registered Under TCT No. 70298, 78960, Portion of 71357, 2017 and 2018 and All Transfer Certificates of Title Derived Therefrom, in Bagong Barrio, Caloocan City for the Upgrading and the Disposal of Lots Therein to their Present Bonafide Occupants and Other Qualified Squatter Families and Authorizing the Appropriation of Funds for the Purpose."

[3] P.D. 1315, Whereas Clauses and Section 2.

[4] P.D. 1315, Section 6.

[5] P.D. 1396, Section 14.

[6] E.O. 648, Section 4 (a); P.D. 1396, Sections 14 and 18. The DHS was later renamed as the Ministry of Human Settlements (MHS) by P.D. 1397 (1978)

[7] Annex "H" to Petition, Rollo, p. 72.

- [8] Annex "I" to Petition, Rollo, p. 73.
[9] Annex "J" to Petition, Rollo, p. 74.
[10] Id.
[11] Annex "K" to Petition, Rollo, pp. 75-76.
[12] Annex "L" to Petition, Rollo, p. 77.
[13] Comment of the Government Corporate Counsel, p. 3, Rollo, p. 94.
[14] Id., pp. 3-4, Rollo, pp. 94-95.
[15] Annex "M" to Petition, Rollo, p. 78.
[16] Annex "P" to Petition, Rollo, p. 81.
[17] Annex "A" to Petition, Rollo, pp. 51-55.
[18] Annex "B" to Petition, Rollo, pp. 57-58.
[19] Petition, pp. 14-15, Rollo, pp. 31-32.
[20] See also Section 2, Rule 65, 1997 Rules of Civil Procedure.
[21] Regalado, Remedial Law Compendium, vol. I, p. 712 (1997)
[22] See also Section 3, Rule 65, 1997 Rules of Civil Procedure.
[23] Angchangco, Jr. v. Ombudsman, 268 SCRA 301, 304 (1997)
[24] University of San Agustin, Inc. v. Court of Appeals, 230 SCRA 76, 771 (1994); Avenue Arrastre & Stevedoring Corp. v. Commissioner of Customs, 120 SCRA 878, 880 (1983); Sales v. Mathay, 129 SCRA 180, 183 (1984)
[25] Perez v. City Mayor of Cabanatuan, 3 SCRA 431, 434 (1961); Booc v. Osmena, Jr., 2 SCRA 418, 422 (1961)
[26] Peralta v. Salcedo, 101 Phil. 452, 454 (1957)
[27] Respondents were represented by the Office of the Government Corporate Counsel (OGCC) and the Office of the Solicitor General (OSG)
[28] Comment of the OGCC, p. 16.
[29] Section 9, P.D. 757, Charter of the NHA.
[30] Petition, p. 21, Rollo, p. 38.
[31] 16 AM JUR 2d S. 207, p. 623.
[32] Comment of the Solicitor General, p. 12.
[33] 106 Phil. 1017 (1960)
[34] See p. 2 of Mr. Justice Mendoza's Concurring Opinion.
[35] Alfonso, op cit., p. 1022.

SEPARATE OPINION

MENDOZA, J., concurring in the judgment:

Petitioner has no cause of action for prohibition or mandamus against respondents. Consistent with his claim that P.D. No. 1315 is unconstitutional, he cannot ask the NHA to relocate the 24 squatter families occupying Lot Nos. 3603, 3605, and 3607. For such power is to be exercised by the NHA only with respect to lands acquired by the government and placed under the administration of NHA. Thus, after declaring the lots enumerated therein as "expropriated," §1 of P.D. No. 1315 directs the NHA "to immediately take possession, control and disposition of the expropriated properties with the power of demolition of their improvements." Indeed, if P.D. No. 1315 is valid, the relocation of the squatters is no concern of petitioner. In such case, the distribution of the land to the squatters as beneficiaries of the law should in fact be undertaken.

Instead, what petitioner should do is to bring an action for ejectment against the squatters and, as an incident thereof, raise in issue the constitutional validity of P.D. No. 1315, since the squatters claim the right to occupy

petitioner's land by virtue of this Decree.

The majority, echoing the Solicitor General's warning, argues that to allow petitioner to question the validity of P.D. No. 1315 many years after its promulgation, could give rise to legal and social complications. Apparently, they refer to the fact that other lots have been acquired by the government by virtue of P.D. No. 1315. I do not share this dire and apocalyptic view. As far back as 1960, this Court in *Alfonso v. Pasay City*[1] already ruled that if property is taken by the government without the benefit of expropriation proceedings and is devoted to public use, such as a road, after many years, the property owner may no longer bring an action for recovery of his land but may simply demand payment of just compensation for his land. This ruling was reiterated in other cases[2] and is now the settled doctrine on this matter.

The court, in an ejectment case, may accordingly pass upon the constitutionality of P.D. No. 1315 without in the least placing in doubt the validity of the previous acquisitions by the government. As already noted, P.D. No. 1315 declares petitioner's land expropriated. Whether this can be done, or whether under the ruling in *Manotok v. NHA*[3], such expropriation by legislative fiat constitutes an unconstitutional deprivation of property without due process of law, is a question which must be litigated in such action.

Petitioner's cause of action, if any, is against those occupying his properties and the appropriate vehicle for challenging the validity of P.D. No. 1315 is to do so in an ejectment case, since the squatters justify their occupation of the lots in question as beneficiaries of the Decree. On the other hand, beyond upholding the squatters' right under the Decree, the NHA has done nothing that is remediable by prohibition and/or mandamus.

I vote to deny the petition for review and to affirm the decision of the Court of Appeals for the reasons herein stated.

- end -

[1] 106 Phil. 1017 (1960). For an even earlier case, see *Herrera v. Auditor General*, 102 Phil. 875 (1958)

[2] *Ministerio v. Court of First Instance*, 40 SCRA 464 (1971); *Amigable v. Cuenca*, 43 SCRA 360 (1972)

[3] 150 SCRA 89 (1987)

DISSENTING AND CONCURRING OPINION

DE LEON, JR., J.:

With due respect, I dissent from the majority decision or ponencia of Mr. Justice Reynato S. Puno insofar as it failed and refused to rule on the unconstitutionality of P.D. No. 1315, subject of the second assignment of error of the petition in the case at bench. However, I concur in the result insofar as the ponencia dismisses the petition at bar for failure of the petitioner to exhaust administrative remedies.

Before us is a petition for review of the Decision[1] and Resolution[2] of the Court of Appeals[3] dated April 24, 1992 and August 31, 1992, respectively, denying the petition for the issuance of a writ of prohibition as well as of a writ of mandamus to compel respondent National Housing Authority (NHA), represented by its project manager, respondent Annabelle D. Carandang, to relocate the 24 squatter families occupying petitioner Pilo Militante's land in Bagong Barrio, Caloocan City. The ratio decidendi of the assailed Decision and Resolution of the Court of Appeals is that P.D. No. 1315 is presumed constitutional. Hence, the petitioner in his second assignment of error questions whether P.D. No. 1315 can be declared void for being unconstitutional at least up to the extent of his properties adversely affected thereby.

The pertinent facts are:

Petitioner is the registered owner of three (3) parcels of contiguous land denominated as lot nos. 3603, 3605 and 3607, with an aggregate area of 1,590 square meters situated in Bagong Barrio, Caloocan City, covered and described in Transfer Certificate of Title Nos. 53066-A[4], 53067[5] and 53068[6] respectively of the Registry of Deeds of Caloocan City. Said titles were all derived from TCT No. 71357.[7]

Around twenty-four (24) squatter families lived on petitioner's land. They claimed to be beneficiaries of P.D. No. 1315[8] which mandated the expropriation of petitioner's land as part of the landed estate in Bagong Barrio, Caloocan City and covered by the Slum Improvement and Resettlement Program and Zonal Improvement Program.

The National Housing Authority (NHA) undertook the implementation of P.D. No. 1315 in seven (7) phases called the Bagong Barrio Project (BBP). The properties covered by phases 1 to 6 were acquired in 1978 and 1979 while those covered by phase 7, including petitioner's subject lots, were left untouched due to inadequate funds of the NHA at that time.

During this hiatus, petitioner sought to prevent the impending expropriation of his subject lots by seeking a declaration of non-coverage from the Human Settlements Regulatory Commission (HSRC). As a result, HSRC Commissioner Raymundo R. Dizon issued a certification[9], dated October 2, 1981, declaring petitioner's lots to be outside the coverage of P.D. No. 1315.

Armed with the said certification, petitioner asked the NHA to relocate the squatters living on his land. The NHA then called them for a dialogue on January 15, 1982 to explore the possibility of an amicable settlement but they did not attend the meeting. Thus, Joaquin Castaño, Acting Division Manager of the Resettlement Division of the NHA, recommended the issuance of a demolition clearance.[10]

On January 21, 1982, Gaudencio V. Tobias, as the then General Manager of the NHA, granted the demolition clearance, and requested then Caloocan City Mayor Macario Asistio, Jr., to implement the same.[11]

In 1986, an emergency fund in the amount of two million pesos (P2,000,000.00) was appropriated and approved by the NHA for the acquisition of the lots covered by phase 7 of the Bagong Barrio Project. Thus, in September 1987, the NHA started negotiations with petitioner for the acquisition of his subject lots. Initially, petitioner offered to sell his lots at P200.00 per square meter while the NHA offered to buy the same at P175.00 per square meter.[12] But in a letter dated April 28, 1988, petitioner upped his asking price to P1,000.00 per square meter and in another letter, the price was further increased to P3,000.00 per square meter. The NHA's final offer was P500.00 per square meter which the petitioner rejected in a letter dated March 20, 1989.[13]

On September 8, 1990, petitioner requested the NHA to revalidate his demolition clearance issued to him on January 21, 1982.[14] He also requested for a certification of the availability of lots in the slum relocation areas of the NHA in Sapang Palay and Bagong Silang, both located in Caloocan City, for occupancy by the squatters living on his land.[15]

On January 15, 1991, Monico V. Jacob, then the General Manager of the NHA, revalidated the said demolition clearance.[16] The task of relocating the squatters from petitioner's land to Sapang Palay and Bagong Silang fell on respondent Annabelle D. Carandang as Project Director of the NHA. She, however, refused to eject the squatters on the ground that their right to occupy petitioner's land was protected by P.D. No. 1315.

Consequently, petitioner filed with this Court a Petition for Prohibition and Mandamus with Declaration as Inexistent and Unconstitutional Presidential Decree No. 1315[17] against respondents NHA and Carandang.

However, this Court, in its Resolution dated July 11, 1991, referred the same to the Court of Appeals.

Petitioner argued that P.D. No. 1315 relied upon by respondent Carangdang is unconstitutional and does not vest in the squatters any right to occupy petitioner's land. As such, petitioner insisted that prohibition and mandamus lie.

The Court of Appeals, however, denied the said petition. Hence, this petition for review of the said Decision and Resolution dated April 24, 1992 and August 31, 1992, respectively of the Court of Appeals.

In the instant petition for review, the petitioner alleges that respondent Court of Appeals erred in ruling only on the issue of constitutionality of P.D. No. 1315 and not on the petition for prohibition and mandamus against respondents NHA and Carangdang. In the petition for review before this Court, the petitioner states two (2) specific assignment of errors, to wit:

"I

WHETHER OR NOT RESPONDENT ANNABELLE CARANGDANG CAN BE COMPELLED TO EFFECT THE DIRECTIVE/MEMORANDUM OF RELOCATION/RESETTLEMENT SUBJECTING THE SAID 24 SQUATTER FAMILIES FROM UNLAWFULLY OCCUPYING PETITIONER'S SUBJECT PROPERTY WITHOUT DECLARING P.D. 1315 AS VOID AND UNCONSTITUTIONAL; AND

II

WHETHER OR NOT SAID P.D. 1315 AT LEAST UP TO THE EXTENT OF PETITIONER'S PROPERTIES ADVERSELY AFFECTED CAN BE DECLARED NULL AND VOID FOR BEING UNCONSTITUTIONAL."[18]

The sequence of events that transpired in the instant case reveals an unmistakable attempt by petitioner to eject the squatters occupying his land first by purely executive action on the part of respondent NHA in coordination with the local officials of Caloocan City, and then when that did not materialize, via prohibition and mandamus proceedings which was first instituted in this Court but later referred to and then ultimately denied by respondent Court of Appeals. We cannot countenance such an underhanded scheme to circumvent our laws vesting in the metropolitan and municipal trial courts the exclusive and original jurisdiction over ejectment cases. Having resorted to judicial intervention with "unclean hands," so to speak, petitioner deserves no relief from us. Since it is truly the ejectment of the squatters living on his land that petitioner seeks, it is an ejectment case that he should file in the proper court. Besides, prohibition is manifestly the wrong remedy in this case.

However, we reverse respondent Court of Appeals insofar as it held that P.D. No. 1315 is still presumed constitutional. Insofar as the second issue explicitly raised by the petitioner in this instant petition for review is concerned, we hereby declare P.D. No. 1315 as unconstitutional for being inherently so and in the light of our ruling in the 1987 case of *Manotok v. National Housing Authority*. [19]

In *Manotok*, we invalidated P.D. Nos. 1669 and 1670 [20] expropriating the Tambunting Estate and real properties along the Estero de Sunog-Apog, both in Manila, respectively, because by the mere issuance of the Presidential decrees, the said properties were automatically expropriated, and declared as such, thereby depriving the owners thereof their right as such without being given the chance to oppose such direct, absolute and immediate compulsory sale of their private lands to the government.

We detailed, thus:

"On January 28, 1980, the President issued the challenged Presidential Decrees Nos. 1669 and 1670 which respectively declared the Tambunting Estate and the Sunog-Apog area expropriated.

"Presidential Decree No. 1669, provides, among others:

‘Section 1. The real properties known as the ‘Tambunting Estate and covered by TCT Nos. 119059, 122450, 122459, 122452, and Lots Nos. 1-A, 1-C, 1-D, 1-E, 1-F and 1-H of (LRC) Psd- 230517 (Previously covered by TCT No. 119058) of the Register of Deeds of Manila with an area of 52,688.70 square meters, more or less are hereby declared expropriated. The National Housing Authority hereinafter referred to as the ‘Authority’ is designated administrator of the National Government with authority to immediately take possession, control, disposition, with the power of demolition of the expropriated properties and their improvements and shall evolve and implement a comprehensive development plan for the condemned properties.

‘xxx xxx xxx

‘Section 6. Notwithstanding any provision of law or decree to the contrary and for the purpose of expropriating this property pegged at the market value determined by the City Assessor pursuant to Presidential Decree No. 76, as amended, particularly by Presidential Decree No. 1533 which is in force and in effect at the time of the issuance of this decree. In assessing the market value, the City Assessor shall consider existing conditions in the area notably, that no improvement has been undertaken on the land and that the land is squatted upon by resident families which should considerably depress the expropriation cost. Subject to the foregoing, the just compensation for the above property should not exceed a maximum of SEVENTEEN MILLION PESOS (P17,000,000.00) which shall be payable to the owners within a period of five (5) years in five (5) equal installments.’

"Presidential Decree No. 1670, on the other hand, provides:

‘Section 1. The real property along the Estero de Sunog-Apog in Tondo, Manila formerly consisting of Lots Nos. 55-A, 55-B and 55-C, Block 2918 of the subdivision plan Psd-11746, covered by TCT Nos. 49286, 49287 and 49288, respectively, of the Registry of Deeds of Manila, and formerly owned by the Manotok Realty Inc., with an area of 72,428.6 square meters, more or less, is hereby declared expropriated. The National Housing Authority hereinafter referred to as the ‘Authority’ is designated administrator of the National Government with authority to immediately take possession, control and disposition, with the power of demolition of the expropriated properties and their improvements and shall evolve and implement a comprehensive development plan for the condemned properties.

‘xxx xxx xxx

‘Section 6. Notwithstanding any provision of law or decree to the contrary and for the purpose of expropriating this property pegged at the market value determined by the City Assessor pursuant to Presidential Decree No. 76, as amended, particularly by Presidential Decree No. 1533 which is in force and in effect at the time of the issuance of this decree. In assessing the market value, the City Assessor shall consider existing conditions in the area notably, that no improvement has been undertaken on the land and that the land is squatted upon by resident families which should considerably depress the expropriation cost. Subject to the foregoing, the just compensation for the above property should not exceed a maximum of EIGHT MILLION PESOS (P8,000,000.00), which shall be payable to the owners within a period of five (5) years in five equal installment.’

"xxx xxx xxx

"The challenged decrees are uniquely unfair in the procedures adopted and the powers given to the respondent NHA.

"The Tambunting subdivision is summarily proclaimed a blighted area and directly expropriated by decree without the slightest semblance of a hearing or any proceeding whatsoever. The expropriation is instant and automatic to take effect immediately upon the signing of the decree. No deposit before taking is required under the decree. The P3,400,000.00 appropriated from the general fund is not a deposit but constitutes an installment payment for the property, the maximum price of which is fixed so as not to exceed P17,000,000.00. there is no provision for any interests to be paid on the unpaid installments spread out over a period of five years. Not only

are the owners given absolutely no opportunity to contest the expropriation, plead their side, or question the amount of payments fixed by decree, but the decisions, rulings, orders, or resolutions of the NHA are expressly declared as beyond the reach of judicial review. An appeal may be made to the Office of the President but the courts are completely enjoined from any inquiry or participation whatsoever in the expropriation of the subdivision or its incidents.

"xxx xxx xxx

"The due process clause cannot be rendered nugatory everytime a specific decree or law orders the expropriation of somebody's property and provides its own peculiar manner of taking the same. Neither should the courts adopt a hands-off policy just because the public use has been ordained as existing by the decree or the just compensation has been fixed and determined beforehand by a statute.

"xxx xxx xxx

In other words, although due process does not always necessarily demand that a proceeding be had before a court of law, it still mandates some form of proceeding wherein notice and reasonable opportunity to be heard are given to the owner to protect his property rights. xxx

"xxx xxx xxx

In the instant petitions, there is no showing whatsoever as to why the properties involved were singled out for expropriation through decrees or what necessity impelled the particular choices or selections. In expropriations through legislation, there are, at least, debates in Congress open to the public, scrutiny by individual members of the legislature, and very often, public hearings before the statute is enacted. Congressional records can be examined. In these petitions, the decrees show no reasons whatsoever for the choice of the properties as housing projects. The anonymous adviser who drafted the decrees for the President's signature cannot be questioned as to any possible error or partiality, act of vengeance, or other personal motivations which may have led him to propose the direct expropriation with its onerous provisions.

"xxx xxx xxx

"After a careful examination of the questioned decrees, we find P.D. Nos. 1669 and 1670 to be violative of the petitioner's right to due process of law and, therefore, they must fail the test of constitutionality.

The decrees do not by themselves, provide for any form of hearing or procedure by which the petitioners can question the propriety of the expropriation of their properties or the reasonableness of the just compensation. xxx. Obviously, it did not deem it necessary because of the enactment of the questioned decrees which rendered, by their very passage, any questions with regard to the expropriation of the properties, moot and academic. In effect, the properties, under the decrees were "automatically expropriated. xxx

"This is hardly the due process of law which the state is expected to observe when it exercises the power of eminent domain.

"xxx xxx xxx

"In P.D. No. 76, P.D. No. 464, P.D. No. 794, and P.D. No. 1533, the basis for determining just compensation was fixed at the market value declared by the owner or the market value determined by the assessor, whichever is lower.

"P.D.s 1669 and 1670 go further. There is no mention of any market value declared by the owner. Sections 6 of the two decrees peg just compensation at the market value determined by the City Assessor. The City Assessor is warned by the decrees to 'consider existing conditions in the area notably, that no improvement has been undertaken on the land and that the land is squatted upon by resident families which should considerably depress

the expropriation costs.'

"In other cases involving expropriations under P.D. Nos. 76, 464, 794, and 1533, this Court has decided to invalidate the mode of fixing just compensation under said decrees. (See *Export Processing Zone Authority v. Hon. Ceferino E. Dulay, et al.* G.R. No. 59603) With more reason should the method in P.D.s [sic] 1669 and 1670 be declared infirm.

"The market value stated by the city assessor alone cannot substitute for the court's judgment in expropriation proceedings. It is violative of the due process and the eminent domain provisions of the Constitution to deny to a property owner the opportunity to prove that the valuation made by a local assessor is wrong or prejudiced. The statements made in tax documents by the assessor may serve as one of the factors to be considered but they cannot exclude or prevail over a court determination made after expert commissioners have examined the property and all pertinent circumstances are taken into account and after the parties have had the opportunity to fully plead their cases before a competent and unbiased tribunal. To enjoin this Court by decree from looking into alleged violations of the due process, equal protection, and eminent domain clauses of the Constitution is impermissible encroachment on its independence and prerogatives." [21]

Manotok squarely applies to the instant case, as P.D. No. 1315 is worded exactly like P.D. Nos. 1669 and 1670. Pertinent portions of P.D. No. 1315 which explicitly declared petitioner's subject property as expropriated, read as follows:

"Section 1. The real properties covered by Transfer Certificate of Title Nos. 70289, 73960 and a portion of 71357 identified as Lot Nos. 3593, 3594 and 3629 in the name of Maria B. Castro and Lot No. 3206 in the name of Bonifacio Co as per Tax Declaration No. 3206 in the name of Bonifacio Co as per Tax Declaration No. 25395 with an aggregate area of 403,799 square meters, more or less; Lot Nos. 3591 and 3592 containing a total area of 1,440 square meters in the name of Abdon Chan as per Tax Declaration Nos. 24853 and 24854 and Lot Nos. 3603, 3605 and 3607 containing a combined area of 1,590 square meters in the name of Pio Militante as per Tax Declaration No. 24876 all of which are were previously covered by Transfer Certificate Title No. 71357 and the adjacent real properties covered by Transfer Certificates of Title No. 2017 and 2018 registered in the name of Leonora Carriedo containing an area of 141,133 square meters, more or less and all located at Bagong Barrio, Caloocan City, Metro Manila, having been identified as a blighted area and included in the SIR Program established under Letters [sic] of Instructions [sic] No. 555 and ZIP Program as provided by Executive Order No. 6-77 dated 21 July 1977 of the Governor, Metropolitan Manila, are hereby declared expropriated. The National Housing Authority hereinafter referred to as the 'Authority' is designated administrator for the national government and is authorized to immediately take possession, control and disposition of the expropriated properties with the power of demolition of their improvements. Pursuant thereto, the Authority with the government of Caloocan City and in consultation with the Metro Manila Commission shall evolve and implement a comprehensive development plan for the condemned properties.

"xxx xxx xxx

"Section 6. Notwithstanding any provision of law or decree to the contrary and for the purpose of expropriating these properties pegged at the market value determined by the City Assessor pursuant to Presidential Decree No. 76, as amended and in force and in effect at the time of the issuance of this decree. In assessing the market value, the City Assessor shall consider existing conditions in the area notably, that no improvement has been undertaken on the land and that the land is squatted upon by resident families which should considerably depressed [sic] the expropriation cost. Subject to the foregoing, the just compensation for the above properties should not exceed a maximum of FORTY MILLION PESOS (P40,000,000.00) which shall be payable to the owners within a period of five (5) years in five (5) equal installments.

"xxx xxx xxx

"Section 11. The decisions, rulings, orders or resolutions of the Authority relative to the disposition of the lots

or dwelling units or such rights acquired hereunder, or to the ejections [sic] of delinquent beneficiaries cannot be the subject of judicial review and shall be final, unless appealed to the Office of the President within thirty (30) days from receipt of such decision, rulings, orders or resolutions; provided, however, that the Office of the President is deemed to have affirmed and appealed such decision, ruling, order or resolution if within sixty (60) days from notice of appeal the said Office has not reversed nor modified." [22]

For the same reasons as those we expounded in *Manotok*, and finding that P.D. No. 1315 inherently violates the due process and just compensation guarantees enshrined in our Constitution, it is my view that P.D. No. 1315 should be as it is hereby declared unconstitutional and void. Another reason for this Court to declare the unconstitutionality and nullity of P.D. No. 1315 is the need to rule on the second assignment of error ("Whether or not said P.D. 1315 at least up to the extent of petitioner's properties adversely affected can be declared null and void for being unconstitutional") considering that the explicit ratio decidendi of the assailed Decision and Resolution of the Court of Appeals, that is, that "P.D. is presumed constitutional". As a Filipino citizen, entitled to certain constitutional rights including due process and just compensation, the petitioner has the right, not merely a privilege, to seek the explicit ruling of this Court on the unconstitutionality of P.D. No. 1315 inasmuch as the squatters on his subject three (3) parcels of land claim the right to occupy the petitioner's land by virtue of that Presidential Decree.

Contrary to the ponencia, the petitioner, in the light of the facts in the case at bar, is not estopped from asserting that P.D. No. 1315 is unconstitutional. It was not the petitioner but the NHA that sought to implement Pres. Decree No. 1315. Petitioner even rejected the final offer of NHA to purchase his lots at Php500.00 per square meter.

I reject the apprehension and dispute the view in the ponencia, apparently believing the exaggerated and baseless warning of the Solicitor General, that to allow the petitioner to question the constitutionality of P.D. No. 1315 many years after its promulgation "might spawn legal and social ramification which cannot be lightly ignored." The warning refers to the fact that other parcels of land have been earlier purchased in 1978 and 1979 by the government by virtue of P.D. No. 1315. However, this Court has already ruled in at least two (2) cases [23] that if property is taken by the government without the benefit of proper expropriation proceedings and is devoted for public use for many years, the property owner may no longer bring an action for recovery of his land but may only demand payment of just compensation thereof. Besides, any action for recovery of those other lots purchased and acquired by the government in 1978 and 1979 and/or for just compensation has already prescribed.

Finally, it appears that: (1) prohibition, is manifestly the wrong remedy in this case and needs no further discussion; and (2) mandamus will not lie for failure of petitioner to exhaust administrative remedies. Petitioner could have appealed to the General Manager and/or Board of Directors of the NHA to compel respondent Annabelle D. Carandang, NHA Project Manager, to effect the Directives/Memorandum of Relocation/Settlement of the 24 squatter families who are occupying the petitioner's subject property. But he did not.

ACCORDINGLY, it is my considered opinion that P.D. No. 1315 should be as it is hereby declared unconstitutional. The assailed Decision dated April 24, 1992 and the Resolution dated August 31, 1992 of the Court of Appeals are hereby AFFIRMED, with the modification that the petition for mandamus is hereby DISMISSED for failure of petitioner to exhaust administrative remedies. The petition for prohibition is also DISMISSED for being patently the wrong remedy in the case at bench.

- end -

[1] Penned by Associate Justice Jose C. Campos, Jr. and concurred in by Associate Justices Alfredo M.

- Marigomen and Fortunato A. Vailoces, Rollo, pp. 51-55.
- [2] Id., pp. 57-58.
- [3] Sixth Division.
- [4] Annex "E" of the Petition, Rollo, pp. 65-66.
- [5] Annex "D" of the Petition, Id., pp. 61-62.
- [6] Annex "C" of the Petition, Id., pp. 59-60.
- [7] Annexes "C", "D", and "E", supra.
- [8] Promulgated by then President Ferdinand E. Marcos on March 26, 1978 entitled, "Providing for the expropriation of a landed estate registered under TCT No. 70298, 73960, portion of 71357, 2017 and 2018 and all transfer certificates of title derived therefrom, in Bagong Barrio, Calocan City for the upgrading and the disposal of lots therein to their present bonafide occupants and other qualified squatter families and authorizing the appropriation of funds for the purpose."
- [9] Annex "H" of the Petition, Rollo, p. 72.
- [10] Annex "J" of the Petition, Id., p. 74.
- [11] Annex "K" of the Petition, Id., p. 75-76.
- [12] Comment, p. 4, Rollo, p. 98.
- [13] Ibid.
- [14] Rollo, p. 80.
- [15] Ibid.
- [16] Annex "P" of the Petition, Rollo, p. 81.
- [17] Annex "P" of the Petition, Rollo, p. 81.
- [18] Petition, pp. 14-15, Rollo, pp. 31-32.
- [19] 150 SCRA 89 (1987)
- [20] Both PDs were issued on January 28, 1980.
- [21] *Manotok v. National Housing Authority*, 150 SCRA 89,94-96, 100-105, 108-109 (1987). Underscoring and emphasis ours.
- [22] Underscoring and emphasis ours.
- [23] *Ministerio v. Court of First Instance*, 40 SCRA 467 (1971); *Amigable v. Cuenca*, 43 SCRA 360 (1972)

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