



Republic of the Philippines  
**Supreme Court**  
Manila

EN BANC

**KALIPUNAN NG DAMAYANG  
MAHIHIRAP, INC.**, represented by its  
Vice-President, **CARLITO BADION,**  
**CORAZON DE JESUS**  
**HOMEOWNERS ASSOCIATION,**  
represented by its President, **ARNOLD  
REPIQUE, FERNANDO SEVILLA** as  
President of Samahang Pamata sa  
Kapatirang Kristiyano, **ESTRELIETA  
BAGASBAS, JOCY LOPEZ, ELVIRA  
VIDOL, and DELIA FRAYRES,**  
Petitioners,

- versus -

**JESSIE ROBREDO**, in his capacity as  
Secretary, Department of Interior and  
Local Government, **Hon. GUIA  
GOMEZ**, in her capacity as **MAYOR OF  
THE CITY OF SAN JUAN, Hon.  
HERBERT BAUTISTA**, in his capacity  
as the **MAYOR OF QUEZON CITY,**  
**Hon. JOHN REY TIANGCO**, in his  
capacity as **MAYOR OF NAVOTAS  
CITY, and the GENERAL MANAGER  
of the NATIONAL HOUSING  
AUTHORITY,**

Respondents.

**G.R. No. 200903**

Present:

**SERENO, C.J.,  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
VILLARAMA, JR.,  
PEREZ,  
MENDOZA,  
REYES,  
PERLAS-BERNABE, and  
LEONEN, JJ.**

Promulgated:

JULY 22, 2014

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## DECISION

**BRION, J.:**

This is a petition for prohibition and mandamus to enjoin the public respondents from evicting the individual petitioners as well as the petitioner-associations' members from their dwellings in the cities of San Juan, Navotas and Quezon without any court order, and to compel the respondents to afford them judicial process prior to evictions and demolitions. The petition primarily seeks to declare as unconstitutional Section 28 (a) and (b) of Republic Act No. 7279 (RA 7279), otherwise known as Urban Development Housing Act, which authorizes evictions and demolitions under certain circumstances without any court order.

### The Factual Antecedents

The members of petitioners Kalipunan ng Damayang Mahihirap, Inc. and Corazon de Jesus Homeowners' Association as well as the individual petitioners, Fernando Sevilla, Estrelieta Bagasbas, Jocy Lopez, Elvira Vidol and Delia Frayres, were/are occupying parcels of land owned by and located in the cities of San Juan, Navotas and Quezon (collectively, *the LGUs*<sup>1</sup>). These LGUs sent the petitioners notices of eviction and demolition pursuant to Section 28 (a) and (b) of RA 7279 in order to give way to the implementation and construction of infrastructure projects<sup>2</sup> in the areas illegally occupied by the petitioners.<sup>3</sup>

Section 28 (a) and (b) of RA 7279 authorize evictions and demolitions without any court order when: (1) persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds; and (2) persons or entities occupy areas where government infrastructure projects with available funding are about to be implemented.

### The Petition

On March 23, 2012, the petitioners directly filed a petition for prohibition and mandamus before the Court, seeking to compel the Secretary of Interior and Local Government, et al. (*the public respondents*) to first secure an eviction and/or demolition order from the court prior to their implementation of Section 28 (a) and (b) of RA 7279.

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<sup>1</sup> Local government units.

<sup>2</sup> Such as the construction of city hall, roads and public school. (*See* Annexes D to F, and 1 to 3).

<sup>3</sup> *Rollo*, pp. 10-11; and Annexes D to G.

The petitioners justify their direct recourse before this Court by generally averring that they have no plain, speedy and adequate remedy in the ordinary course of law.<sup>4</sup> They also posit that the respondents gravely abused their discretion in implementing Section 28 (a) and (b) of RA 7279 which are patently unconstitutional. They likewise insist that they stand to be directly injured by the respondents' threats of evictions and demolitions. In the alternative, they contend that the transcendental public importance of the issues raised in this case clothes them with legal standing.<sup>5</sup>

The petitioners argue that Section 28 (a) and (b) of RA 7279 offend their constitutional right to due process because they warrant evictions and demolitions without any court order. They point out that Section 6, Article 3 of the 1987 Constitution expressly prohibits the impairment of liberty of abode unless there is a court order. Moreover, Section 28 (a) and (b) of RA 7279 violate their right to adequate housing, a universal right recognized in Article 25 of Universal Declaration of Human Rights and Section 2 (a) of RA 7279. The petitioners further complain that the respondents had previously conducted evictions and demolitions in a violent manner, contrary to Section 10, Article 13 of the 1987 Constitution.<sup>6</sup>

### **The Respondents' Case**

#### **A. The Position of the Mayor of Navotas**

The Mayor of Navotas prays for the outright dismissal of the petition for its serious procedural defects. ***First***, the petitioners ignored the hierarchy of courts when they directly filed a Rule 65 petition before the Court.<sup>7</sup> ***Second***, the petitioners incorrectly availed themselves of a petition for prohibition and mandamus in assailing the constitutionality of Section 28 (a) and (b) of RA 7279. According to the Mayor of Navotas, the office of a writ of prohibition is merely to prevent the public respondent's usurpation of power or improper assumption of jurisdiction. On the other hand, a writ of mandamus only commands the public respondent to perform his ministerial functions. ***Third***, the petitioners failed to particularly state the grave abuse of discretion that the Mayor of Navotas allegedly committed. ***Fourth***, the petition does not present any justiciable controversy since the City of Navotas had already successfully evicted the petitioners in San Roque, Navotas on November 28, 2011. ***Fifth***, the petition was filed out of time since the petitioners were personally notified of the intended eviction and demolition on September 23, 2011.<sup>8</sup>

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<sup>4</sup> Id. at 4.

<sup>5</sup> Id. at 6-7, 10-11.

<sup>6</sup> Id. at 13-18.

<sup>7</sup> Mayor Tiangco's Comment to the Petition, p. 7.

<sup>8</sup> Id. at 4-5.

The Mayor argues that Section 10, Article 13 of the 1987 Constitution allows evictions and demolitions to be conducted even without a court order provided they are done in accordance with the law and in a just and humane manner. According to him, RA 7279 is precisely the law referred to by Section 10, Article 13 of the 1987 Constitution. The Mayor also disputes the petitioners' claim that RA 7279 does not afford the informal settlers procedural due process prior to evictions and demolitions. He points out that Section 28 of RA 7279 and its implementing rules and regulations (*IRR*) mandate that the affected persons or entities shall be given notice at least thirty (30) days prior to the date of eviction or demolition. The respondents are likewise required to consult with the duly designated representatives of the affected families and communities with respect to their relocation. He further asserts that his faithful implementation of Section 28 (a) and (b) of RA 7279, which are presumed to be constitutional, cannot be equated to grave abuse of discretion. Lastly, the Mayor of Navotas insists that the petitioners' invocation of their right to freely choose their abode is misplaced since they have no vested right to occupy properties that they do not own.<sup>9</sup>

### **B. The Position of the Mayor of San Juan**

The Mayor of San Juan similarly argues that the petitioners improperly availed themselves of a petition for prohibition and mandamus before the Court. She contends that she performed neither judicial nor ministerial functions in implementing RA 7279, the enabling law of Section 10, Article 13 of the 1987 Constitution. She also maintains that the petition has been rendered moot and academic by the successful eviction of some of the petitioners in Pinaglabanan, Corazon de Jesus, San Juan. The Mayor of San Juan further stresses that Section 28 (a) and (b) of RA 7279 already lay down the procedure in evicting informal settlers in a just and humane manner.<sup>10</sup>

### **C. The Position of the Mayor of Quezon**

The Mayor of Quezon City holds that the petitioners' premature invocation of the Court's power of judicial review and their violation of the principle of hierarchy of courts are fatal to their cause of action. Moreover, the petitioners failed to substantiate the material allegations in the petition. He additionally argues that his faithful implementation of RA 7279, which the legislature enacted in the exercise of police power, does not amount to grave abuse of discretion.<sup>11</sup>

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<sup>9</sup> Id. at 8-10.

<sup>10</sup> Mayor Gomez' Comment to the Petition, pp. 5-8.

<sup>11</sup> Mayor Bautista's Comment to the Petition, pp. 2-6.

#### **D. The Position of the Secretary of Interior and Local Government and the General Manager of the National Housing Authority**

The Secretary of Interior and Local Government and the National Housing Authority (NHA) General Manager adopt the Mayor of Navotas' position that the petition is procedurally infirm. They further argue that the liberty of abode is not illimitable and does not include the right to encroach upon other person properties. They also reiterate that Section 28 of RA 7279 provides sufficient safeguards in ensuring that evictions and demolitions are carried out in a just and humane manner.<sup>12</sup>

#### **The Issues**

This case presents to us the following issues:

- (1) Whether the petition should be dismissed for serious procedural defects; and
  - (a) Whether the petitioners violated the principle of hierarchy of courts;
  - (b) Whether the petitioners correctly availed themselves of a petition for prohibition and mandamus;
- (2) Whether Section 28 (a) and (b) of RA 7279 are violative of Sections 1 and 6, Article 3 of the 1987 Constitution.

#### **The Court's Ruling**

**We dismiss the petition.**

***The petitioners violated the principle of hierarchy of courts when they directly filed the petition before the Court.***

The petitioners have unduly disregarded the hierarchy of courts by coming directly to the Court with their petition for prohibition and mandamus. The petitioners appear to have forgotten that the Supreme Court is a court of last resort, not a court of first instance. The hierarchy of courts should serve as a general determinant of the appropriate forum for Rule 65 petitions. The concurrence of jurisdiction among the Supreme Court, Court of Appeals and the Regional Trial Courts to issue writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction does not give the petitioners the unrestricted freedom of choice of forum. By directly

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<sup>12</sup> DILG Secretary and the General Manager of the NHA's Comment to the Petition, pp. 13-49.

filing Rule 65 petitions before us, the petitioners have unduly taxed the Court's time and attention which are better devoted to matters within our exclusive jurisdiction. Worse, the petitioners only contributed to the overcrowding of the Court's docket. We also wish to emphasize that the trial court is better equipped to resolve cases of this nature since this Court is not a trier of facts and does not normally undertake an examination of the contending parties' evidence.<sup>13</sup>

***The petitioners wrongly availed themselves of a petition for prohibition and mandamus.***

We cannot also ignore the petitioners' glaring error in using a petition for prohibition and mandamus in the current case.

The petitioners seem to have forgotten that a writ of prohibition only lies against the tribunal, corporation, board, officer or person's exercise of **judicial, quasi-judicial or ministerial functions**.<sup>14</sup> We issue a writ of prohibition to afford the aggrieved party a relief against the respondent's usurpation or grave abuse of jurisdiction or power.<sup>15</sup>

On the other hand, a petition for mandamus is merely directed against the tribunal, corporation, board, officer, or person who unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust or station or who unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled.<sup>16</sup> Thus, a writ of mandamus will only issue to compel an officer to perform a **ministerial duty**. It will not control a public officer's exercise of discretion as where the law imposes upon him the duty to exercise his judgment in reference to any manner in which he is required to act precisely because it is his judgment that is to be exercised, not that of the court.<sup>17</sup>

In the present case, the petitioners seek to prohibit the respondents from implementing Section 28 (a) and (b) of RA 7279 without a prior court order of eviction and/or demolition. In relation to this, paragraph 1, Section 28 of RA 7279 provides:

Sec. 28. Eviction and Demolition. — Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, **may** be allowed under the following situations:

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<sup>13</sup> *Bañez, Jr. v. Concepcion*, G.R. No. 159508, August 29, 2012, 679 SCRA 237; *Dacudao v. Secretary Raul Gonzales*, G.R. No. 188056, January 8, 2013, 688 SCRA 109, 115-118.

<sup>14</sup> RULES OF COURT, Rule 65, Section 2.

<sup>15</sup> *David v. Rivera*, 464 Phil. 1006, 1017-1018 (2004).

<sup>16</sup> RULES OF COURT, Rule 65, Section 3.

<sup>17</sup> *Marcelo, Jr. v. Villordon*, G.R. No. 173081, December 15, 2010, 638 SCRA 557, 564-565.

- (a) **When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;**
- (b) **When government infrastructure projects with available funding are about to be implemented; or**
- (c) When there is a court order for eviction and demolition. (emphasis and underline ours)

A reading of this provision clearly shows that the acts complained of are beyond the scope of a petition for prohibition and mandamus. The use of the permissive word “may” implies that the public respondents have discretion when their duty to execute evictions and/or demolitions shall be performed. Where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.<sup>18</sup>

Consequently, the time when the public respondents shall carry out evictions and/or demolitions under Section 28 (a), (b), and (c) of RA 7279 is merely discretionary, and not ministerial, judicial or quasi-judicial. The duty is discretionary if the law imposes a duty upon a public officer and gives him the right to decide when the duty shall be performed.

In contrast, a ministerial 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 own judgment upon the propriety or impropriety of the act done.<sup>19</sup>

On the other hand, both judicial and quasi-judicial functions involve the determination of what the law is, and what the legal rights of the contending parties are, with respect to the matter in controversy and, on the basis thereof and the facts obtaining, the adjudication of their respective rights.<sup>20</sup>

***The resolution of the constitutionality of Section 28 (a) and (b) of RA 7279 is not the lis mota of the case.***

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<sup>18</sup> *Philippine Amusement and Gaming Corporation v. Philippine Gaming Jurisdiction, Incorporated*, 604 Phil. 547, 553 (2009).

<sup>19</sup> *Espiridion v. Court of Appeals*, 523 Phil. 664, 668 (2006), citing *Codilla, Sr. v. de Venecia*, 442 Phil. 139 (2002).

<sup>20</sup> *Doran v. Lucson, Jr.*, 534 Phil. 198, 204-205 (2006).

Even if we treat the present petition as one for *certiorari* since it assails the constitutionality of Section 28 (a) and (b) of RA 7279, the petition must necessarily fail for failure to show the essential requisites that would warrant the Court's exercise of judicial review. It is a rule firmly entrenched in our jurisprudence that the courts will not determine the constitutionality of a law unless the following requisites are present: (1) the existence of an actual case or controversy involving a conflict of legal rights susceptible of judicial determination; (2) the existence of personal and substantial interest on the part of the party raising the constitutional question; (3) recourse to judicial review is made at the earliest opportunity; and (4) the resolution of the constitutional question must be necessary to the decision of the case.<sup>21</sup>

Save for the petition pertaining to the City of Quezon's threat of eviction and demolition, this case no longer presents a justiciable controversy with respect to the Mayors of Navotas and San Juan. We take note of the *Comments* of these Mayors who alleged that they had already successfully evicted the concerned petitioners in their respective cities at the time of the filing of the petition.

What further constrains this Court from touching on the issue of constitutionality is the fact that this issue is not the *lis mota* of this case. *Lis mota* literally means "the cause of the suit or action"; it is rooted in the principle of separation of powers and is thus merely an offshoot of the presumption of validity accorded the executive and legislative acts of our co-equal branches of the government.

This means that the petitioner who claims the unconstitutionality of a law has the burden of showing first that the case cannot be resolved unless the disposition of the constitutional question that he raised is unavoidable. If there is some other ground upon which the court may rest its judgment, that course will be adopted and the question of constitutionality should be avoided.<sup>22</sup> *Thus, to justify the nullification of a law, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative or argumentative.*<sup>23</sup>

We carefully read the petitions and we conclude that they fail to compellingly show the necessity of examining the constitutionality of Section 28 (a) and (b) of RA 7279 in the light of Sections 1 and 6, Article 3 of the 1987 Constitution.<sup>24</sup> In *Magkalas v. NHA*,<sup>25</sup> this Court had already

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<sup>21</sup> *Macasiano v. National Housing Authority*, G.R. No. 107921, July 1, 1993, 224 SCRA 236, 242.

<sup>22</sup> *Liban v. Gordon*, G. R. No. 175352, January 18, 2011, 639 SCRA 709; and *General v. Urro*, G.R. No. 191560, March 29, 2011, 646 SCRA 567.

<sup>23</sup> *Betoy v. Board of Directors*, G.R. Nos. 156556-57, October 4, 2011, 658 SCRA 420, 451-452, citing *Gerochi v. Department of Energy*, G.R. No. 159796, July 17, 2007, 527 SCRA 696.

<sup>24</sup> Section 1, Article 3 of the 1987 Constitution provides:



ruled on the validity of evictions and demolitions without any court order. In that case, we affirmed the validity of Section 2 of Presidential Decree No. 1472 which authorizes the NHA to summarily eject all informal settlers' colonies on government resettlement projects as well as any illegal occupant in any homelot, apartment or dwelling unit owned or administered by the NHA. In that case, we held that Caridad Magkalas' illegal possession of the property should not hinder the NHA's development of Bagong Barrio Urban Bliss Project. We further stated that demolitions and evictions may be validly carried out even without a judicial order in the following instances:

- (1) when the property involved is an expropriated property xxx pursuant to Section 1 of P.D. No. 1315;
- (2) when there are squatters on government resettlement projects and illegal occupants in any homelot, apartment or dwelling unit owned or administered by the NHA pursuant to Section 2 of P.D. No. 1472;
- (3) **when persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways and other public places such as sidewalks, roads, parks and playgrounds, pursuant to Section 28(a) of R.A. No. 7279;**
- (4) **when government infrastructure projects with available funding are about to be implemented pursuant to Section 28(b) of R.A. No. 7279.**<sup>26</sup> (emphasis ours)

We note that Section 10, Article 13 of the 1987 Constitution provides that urban or rural poor dwellers shall not be evicted nor their dwelling demolished, except in accordance with law and in a just and humane manner. Paragraph 1, Section 28 of RA 7279 allows summary evictions and demolition in cases where persons or entities occupy danger areas and when persons or entities occupy areas where government infrastructure projects with available funding are about to be implemented.

To ensure that evictions and demolitions are conducted in a just and humane manner, paragraph 2, Section 28 of RA 7279 commands the public respondents to comply with the following prescribed procedure in executing eviction and/or demolition orders:

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No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 6, Article 3 of the 1987 Constitution provides:

Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

<sup>25</sup> G.R. No. 138823, 587 Phil. 152,161 (2008).

<sup>26</sup> Id. at 167-168.

In the execution of eviction or demolition orders involving underprivileged and homeless citizens, the following shall be mandatory:

- (1) Notice upon the effected persons or entities at least thirty (30) days prior to the date of eviction or demolition;
- (2) Adequate consultations on the matter of settlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;
- (3) Presence of local government officials or their representatives during eviction or demolition;
- (4) Proper identification of all persons taking part in the demolition;
- (5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;
- (6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;
- (7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and
- (8) Adequate relocation, whether temporary or permanent: Provided, however, That in cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from service of notice of final judgment by the court, after which period the said order shall be executed: Provided, further, That should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum daily wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.

This Department of the Interior and Local Government and the Housing and Urban Development Coordinating Council shall jointly promulgate the necessary rules and regulations to carry out the above provision.

Lastly, the petitioners failed to substantiate their allegations that the public respondents gravely abused their discretion in implementing Section 28 (a) and (b) of RA 7279. Instead, they merely imputed jurisdictional abuse to the public respondents through general averments in their pleading, but without any basis to support their claim.

This is precisely the reason why we frown upon the direct filing of Rule 65 petitions before the Court. To the point of being repetitive, we

Lastly, the petitioners failed to substantiate their allegations that the public respondents gravely abused their discretion in implementing Section 28 (a) and (b) of RA 7279. Instead, they merely imputed jurisdictional abuse to the public respondents through general averments in their pleading, but without any basis to support their claim.

This is precisely the reason why we frown upon the direct filing of Rule 65 petitions before the Court. To the point of being repetitive, we emphasize that we are not trier of facts and this applies with greater force to Rule 65 petitions which are *original and independent actions*. To justify judicial intrusion into what is fundamentally the domain of the executive department, the petitioners must establish facts that are necessarily linked to the jurisdictional problem they presented in this case, *i.e.*, whether the public respondents exercised their power in an arbitrary and despotic manner by reason of passion or personal hostility in implementing Section 28 (a) and (b) of RA 7279.

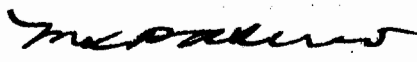
Since the petitioners failed to establish that the public respondents' alleged abuse of discretion was so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law, this petition must necessarily fail.<sup>27</sup>

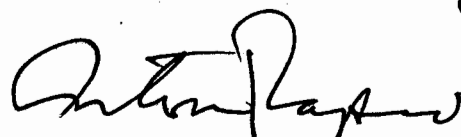
**WHEREFORE**, premises considered, we hereby **DISMISS** the petition for its serious procedural defects. No costs.

**SO ORDERED.**

  
**ARTURO D. BRION**  
Associate Justice

**WE CONCUR:**

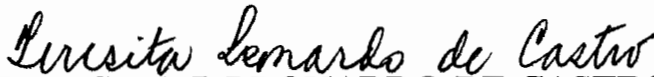
  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

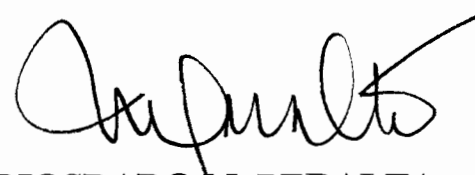
  
**ANTONIO T. CARPIO**  
Associate Justice

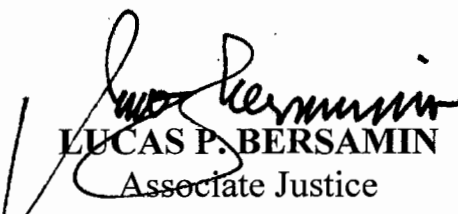
  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice

<sup>27</sup>

*Unilever Philippines, Inc. v. Tan*, G.R. No. 179367, January 29, 2014.

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

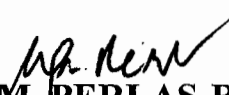
  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

(On leave)  
**JOSE CATRAL MENDOZA**  
Associate Justice


  
**BIENVENIDO L. REYES**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice