Judicial Interpretation of the Law on Just and Humane Evictions

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INTRODUCTION

"Just and humane evictions" is a seeming contradiction in terms. After all, the evolution of summary procedures for ejectment illustrates the legal resolve to provide landowners with the most expeditious and effective legal remedy to oust violators of traditional ownership and possession postulates. Given our Roman and Anglo-American legal tradition, to afford "just and humane"

treatment to the transgressor of property rights might honor the breach rather than the observance.

A survey of past and present constitutional and statutory mandates to promote social justice, however, elucidates the essence of "just and humane evictions."

The 1935 Constitution asserted, in no small measure, a recognition of justice to the common *tao*[1] with a commitment of the State to promote social justice "to insure the well-being and economic security of all the people."[2]

In the 1973 Constitution, the social justice clause was phrased in this manner:

> The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits.[3]

Alongside this constitutional policy was the over-all objective of the Marcos New Society with the advent of martial law in 1972: to effect the desired changes and reforms in the social, economic and political structure of the country.[4]

In 1977, Letter of Instruction No. 557 integrated a policy of slum improvement into the national housing policy, due to the fact that "a large number of our people are living in an environment of filth and degradation in slums and other blighted communities — a situation which is incompatible with the New Society."[5]

In 1978, Presidential Decree No. 1517 proclaimed urban land reform in the Philippines and provided for the implementing machinery therefor. Section 6 of P.D. 1517 granted legitimate tenants who have resided for ten years or more in designated urban land reform zones a "right of first refusal" to purchase the land upon which their homes were built.

Pursuant to P.D. 1517, Proclamation No. 1810 was issued in 1978. It clarified that areas identified as projects for development under the slum upgrading programs shall become urban land reform zones. In 1980, Proclamation No. 1967 specified 244 sites in Metro Manila as areas for priority development (APDs) and urban land reform zones.

1. 1 J. ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 147 (1936).
2. 1935 PHIL. CONST. art. II, § 5.
3. 1973 PHIL. CONST. art. II, § 6.
4. Presidential Decree no. 25, Pmbl. (1972).
5. Letter of Instruction no. 557, Pmbl. (1977).

In 1984, the provisions on National Economy and the Patrimony of the Nation in the 1973 Constitution were amended to include, *inter alia,* the following:

> The State shall moreover undertake an urban land reform and social housing program to provide deserving landless, homeless or inadequately sheltered low-income resident citizens reasonable opportunity to acquire land and decent housing consistent with Section 2 of Article IV of this Constitution.[6]

In 1986, Presidential Decree No. 2016 mandated that a tenant or occupant family residing for ten years or more from 1978 in land proclaimed as an APD or urban land reform zone or as a slum upgrading area should not be evicted from such property.

The Constitutional Commission of 1986 expanded the social justice clause by incorporating an entire article devoted to Social Justice and Human Rights. The provisions on Urban Land Reform and Housing proclaim that:

> The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.[7]
>
> Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner.[8]

"Just and humane evictions," under the existing constitutional framework enshrining social justice and human rights as the centerpiece of the Constitution,[9] underscores the socio-economic plight of these transgressors of traditional property laws. That "just and humane" treatment is only available to eviction of urban or rural poor dwellers is consistent with the observation made by Commissioner Edmundo G. Garcia:

> Our historical experience precisely refers to urban poor communities occupying unused lands or abandoned lands where they have been living for a long time. In the past, whenever there was an excuse for the government to evict them, it would bring in the military or police to drive the people out by force without any kind of consideration as to the historical circumstances and to the rights of these inhabitants who, after many long years, have been residents of that area and have found jobs nearby.[10]

6. 1973 PHIL. CONST. art. XIV, § 12.
7. PHIL. CONST. art. XIII, § 9.
8. *Id.* § 10.
9. II RECORD OF THE CONSTITUTIONAL COMMISSION 606-07 (1986) [hereinafter II RECORD].
10. *Id.* at 673.

It is clear that the Constitution allows eviction of urban or rural poor dwellers only if: (a) eviction is in accordance with law; and (b) it is undertaken in a just and humane manner. In addition, the second paragraph of Section 10, Article XIII requires adequate consultation with the relocated and the communities where they are to be relocated.

Section 28 of the Urban Development and Housing Act (UDHA) of 1992[11] set out in letter and spirit the law on eviction of urban poor dwellers

11. An Act to Provide a Comprehensive and Continuing Urban Development and Housing Program, Establish the Mechanism for its Implementation, and for other Purposes (1992), Republic Act No. 7279. [hereinafter UDHA].

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:

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;

When government infrastructure projects with available funding are about to be implemented; or,

When there is a court order for eviction and demolition.

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

Notice upon the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition;

Adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;

Presence of local government officials or their representatives during eviction or demolition;

Proper identification of all persons taking part in the demolition;

Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;

No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;

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

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.

under the Constitution. UDHA sponsor Senator Jose D. Lina, Jr. noted that the procedures laid down in Section 28 supply the details called for under the constitutional qualification that eviction of urban poor dwellers should be "in accordance with law."[12]

Since the passage of the UDHA in 1992, numerous cases have come before the Supreme Court and the Court of Appeals dealing with eviction of urban poor dwellers who, in turn, have raised Section 28 of the UDHA and Section 10, Article XIII of the 1987 Constitution, and P.D. Nos. 1517 and 2016 as an integral part of their defense.

This paper will delve into the trend of Supreme Court and Court of Appeals decisions on Section 28 of the UDHA and Section 10, Article XIII of the 1987 Constitution, and P.D. Nos. 1517 and 2016. The author realizes that there is no dearth of studies made to review the performance of the national and local executive branches of government with regard to UDHA and urban land reform implementation.[13] Perhaps a study on judicial interpretations of the laws on just and humane evictions is in order.

Part I focuses on the constitutional basis for Section 28 of the UDHA. Part II surveys the different laws that form the legal basis for evicting the urban poor. Part III reports on Section 28 and its implementing rules and regulations and, for a holistic presentation, likewise touches upon the Marcos Urban Land Reform Decrees, namely P.D. Nos. 1517 and 2016. In some cases, the provisions on "right of first refusal" and "prohibition against eviction of tenants" have been cast alongside Section 28 as a strong line of legal defense for the urban poor, in the face of evictions against their will. Part IV reports on and outlines trends in Supreme Court and Court of Appeals decisions on the UDHA. Part V concludes with what may lie ahead.

For purposes of this study, only cases invoking Section 10, Article XIII of the 1987 Constitution, the UDHA, P.D. Nos. 1517 and 2016 shall be discussed. Hence, this study will generally traverse cases of the Supreme Court and Court of Appeals decided from 1992 to the present. Lower court decisions have not been included, but they shall be the subject of future study.

It shall be presumed that the term "eviction" entails the concept of "demolition." It must be stressed, however, that "eviction" pertains to removal

The Department of 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.

12. IV RECORD OF THE SENATE 80 (No. 60) (1992).

13. *See, e.g.*, ANNE MARIE A. KARAOS, AN ASSESSMENT OF THE GOVERNMENT'S SOCIAL HOUSING PROGRAM (1996); ANA MARIE DIZON, THE UDHA CHALLENGE: MONITORING LGU COMPLIANCE, ISSUES AND DEVELOPMENTS IN LOCAL HOUSING (2000).

of persons and their belongings from a subject building/structure or area, or both; "demolition" refers to dismantling of structures.

I. The Constitutional Mandate

The original version of Section 10, Article XIII which came up before the Constitutional Commission read:

> Urban poor dwellers with valid claims shall not be evicted nor their dwellings demolished except in accordance with due process and always in a just and humane manner. No resettlement shall take place without consultation with the communities to be relocated and their involvement in its planning and implementation."

A. Due Process Component

Deliberations at the floor of the Constitutional Commission resulted in the replacement of the word "due process" with the word "law."

> MR. SARMIENTO. May I be clarified on why we removed the words "due process" and replaced these with the word "LAW" instead?
>
> MR. BENGZON. It is a redundancy. If it is in accordance with law, it means to say it is with due process.
>
> MR. SARMIENTO. Thank you.[14]

Due process has its procedural and substantive aspects. Procedurally, Mr. Daniel Webster expounded that due process of law "is more clearly intended the general law, a law which hears before it condemns; which proceeds upon enquiry, and renders judgment only after trial."[15]

Bernas also points out the substantive nature of the due process guarantee:

> If all that the due process clause requires is proper procedure, then life, liberty, and property can be destroyed provided proper forms are observed. Such an interpretation, evidently, makes of the due process clause a totally inadequate protection for personal and property rights. Hence, the clause must be understood to guarantee not just forms of procedure but also the very substance of life, liberty, and property.[16]

During the 1971 Constitutional Convention, there was a move to delete "property" from the due process clause, because it gave the erroneous impression that the Constitution gives to property the same degree and quality of protection that it gives to life and liberty. This move was defeated, but Convention deliberations clearly recognized that the social character of private

14. II Record, *supra* note 9, at 93.

15. Lopez v. Director of Lands, 47 Phil. 23, 32 (1924).

16. I Bernas, The Constitution of the Republic of the Philippines: A Commentary 48 (1988).

property definitely placed property in a position inferior to life or liberty.[17] Property, however, has its intimate connection with life and liberty. Today's hierarchical arrangement of values is precisely a recognition of the importance of property to the person. Hence, the precise object of more intensive and extensive government regulation of property is to make its beneficent purpose equitably available to all.[18]

In his sponsorship speech in behalf of the Bicameral Conference Committee on then Senate Bill No. 234 and House Bill No. 34310, Senator Jose D. Lina, Jr. discussed the nature of what was then Section 28 of the proposed UDHA:

> Several actions are contemplated in implementing the constitutional mandate that urban poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with the procedures set forth in the proposed consolidated version and in a just and humane manner, as called for in Article XIII, Section 10 of the Constitution.[19]

The requirements laid down under Section 28 of the UDHA supplied the details to the due process component of just and humane eviction. These details constitute the legislative determination of which evictions are in accordance with law and the due process guarantee.

B. On "Constitutionalizing" Squatting

Commissioner Crispino M. De Castro questioned the entire concept of subjecting evictions of urban dwellers to two conditions, i.e., that they be "in accordance with law" and "in a just and humane manner." It resulted in what he called the "constitutionalization" of squatting:

> I will agree on a humane and just manner of evicting them, but to require the owner of that land to go to court so that he can comply in accordance with law, will be too much punishment for the poor owner who is perhaps as poor as the squatter himself.[20]

Commissioner De Castro moved for the deletion of the entire sentence which incorporated the preconditions. Commissioner Lino Brocka rose in defense of just and humane evictions:

> This particular section is premised on the fact that squatters, whether they are illegal or not, whether they are professionals or not, are human beings. It is not their fault that they are poor. Under the law, they should be protected. That particular protection is what we are asking under this section on social justice.[21]

17. *Id.* at 42.

18. *Id.* at 43.

19. IV Record of the Senate 80 (No. 60) (1992).

20. II Record, *supra* note 9, at 94.

21. *Id.* at 95.

With a vote of 1-30, the amendment proposed by Commissioner De Castro was defeated.

C. *Adequate Consultation*

Commissioner Florenz D. Regalado emphasized the need to consult with communities where urban poor dwellers shall be relocated:

> We will give the communities where they are going to be transferred a say on whether or not they should be placed in that particular community. In other words, we provide a dual consultation with the community and with the urban poor in their own community. Also, this will provide a chance for the other community to which they are going to be relocated to explain whether their resources or their situation would accommodate so many in the resettlement areas.[22]

Consultation, however, does not mean that the parties consulted can override governmental action. In essence, it means an opportunity to ventilate possible problems on matters of eviction.[23] But consultation definitely includes involvement of the urban poor dwellers to be evicted in the planning and implementation stages of relocating them.[24]

D. *Urban Land Reform and Housing*

One of the early versions of Section 9, Article XIII dealt with the concept of "urban land *use.*" Commissioner Vicente Foz insisted on "urban land *reform,*" and explained the components of an urban land reform program:

> First, to liberate human communities from blight, congestion, and hazards and to promote their development and modernization; second, to bring about the optimum use of land as a national resource for public welfare rather than as a community [sic] of trade subject to price speculation and indiscriminate use; third, to provide equitable access to and opportunity for the use and enjoyment of the fruits of the land; fourth, to acquire such lands as are necessary to prevent speculative buying of land for public welfare; and finally, to maintain and support a vigorous private enterprise system responsive to community requirements in the use and development of urban lands.[25]

It was also agreed that the general rule on regulation, acquisition, ownership, use and disposition of property still holds under the concept of urban land reform, as the term easily involves the idea of regulation.[26]

22. *Id.* at 96.
23. *Id.* at 97.
24. *Id.* at 93.
25. *Id.* at 90.
26. *Id.* at 92.

II. LAWS ON EVICTION AND DEMOLITION

A. *Civil Code: Ownership and Possession*

The foundation of our laws on property is Book II of the Civil Code of the Philippines,[27] on Property, Ownership, and its Modifications. It enumerates legal rights attached to ownership.

> [t]he owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.[28]

So-called builders in bad faith lose what is built without right to indemnity:[29]

> [t]he owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.

Also, a true owner must resort to judicial process for the recovery of property taken away from him or her.[30]

Title V on Possession asserts that every possessor has a right to be respected in his possession. Should s/he be disturbed in his possession, s/he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.[31]

B. *Ejectment*

There are three types of actions involving ejectment of a person from another's property. Restating Moran in *Reyes v. Sta. Maria,*[32] the Supreme Court enumerated them as follows:

> a) summary action for forcible entry or detainer (denominated *accion interdictal* under the former law of procedure), which seeks the recovery of physical possession only and is brought within one year before the Metropolitan or Municipal Trial Courts;
>
> b) the *accion publiciana,* which is for the recovery of the right to possess and is a plenary action in an ordinary civil proceeding in Regional Trial Courts; and

27. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE].
28. *Id.* art. 429.
29. *Id.* art. 449.
30. *Id.* art. 433.
31. *Id.* art. 539.
32. 91 SCRA 164, 168 (1979).

c) *accion de reivindicacion,* which seeks the recovery of ownership, including the right to use and the right to the fruits, also brought before Regional Trial Courts.

C. Civil Code: Nuisance

A nuisance is any act, omission, establishment, business, condition of property, or anything else which: (1) injures, endangers the health or safety of others; (2) annoys or offends the senses; (3) shocks, defies or disregards decency or morality; (4) obstructs or interferes with the free passage any public highway or street, or any body of water; or (5) hinders or impairs the use of property.[33]

Nuisances may be classified as nuisance *per se* and nuisance *per accidens*. A nuisance *per se* is that which is a nuisance at all times and under any circumstance, regardless of location and surroundings. A nuisance *per accidens* is that which may be considered a nuisance by reason of circumstances, location or surroundings.

Nuisances may also be classified based on injurious effect, i.e., as private and public in nature. A public nuisance affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal. A private nuisance affects only a person or small number of persons.[34]

The remedies against a public nuisance are prosecution under the Revised Penal Code or any local ordinance, a civil action, or abatement without judicial proceedings.[35] The district health officer shall determine whether or not abatement, without judicial proceedings, is the best remedy against public nuisance.[36] The remedies against a private nuisance are civil actions or abatement without judicial proceedings.[37]

D. LOI Nos. 19 and 19-A

Pursuant to his powers under martial rule, in the interest of public health, safety and peace and order, then President Marcos issued Letters of Instruction Nos. 19 and 19-A, which ordered the removal of all illegal constructions along *esteros*, river banks, railroad tracks, and those built without permits on public or private property. It also required the relocation and determination of relocation sites for squatters and other persons displaced or evicted.

Letter of Instruction No. 19-A, on the other hand, laid down pre-relocation, relocation, and post-relocation phases for the transfer and

33. CIVIL CODE, art. 694.
34. *Id.* art. 695.
35. *Id.* art. 699.
36. *Id.* art. 702.
37. *Id.* art. 705.

resettlement of affected persons. Presidential Decree No. 269 was issued in 1973, and ordered all persons to renounce possession and move out of portions of rivers, creeks, *esteros,* drainage channels and other similar waterways encroached upon by them.

E. Building Code

In 1977 Marcos issued Presidential Decree No. 1096, or the National Building Code. Section 301 states that:

> [n]o person, firm or corporation, including any agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure or cause the same to be done without first obtaining a building permit therefor from the Building Official assigned in the place where the subject building is located or the building work is to be done.

Aside from building permits, certificates of occupancy are required:[38]

> No building or structure shall be used or occupied and no change in the existing use or occupancy classification of a building or structure or portion thereof shall be made until the Building Official has issued a Certificate of Occupancy therefor as provided in this Code.

Under Section 215, the Building Official who is tasked to enforce and implement the law and its rules and regulations may abate buildings or structures found or declared to be dangerous or ruinous.

Ministry Order No. 31, series of 1983, issued by the Minister (now Secretary) of Public Works and Highways, however, asserted that once a builder is determined as a squatter, it is the anti-squatting laws, and not P.D. 1096, that should be enforced against him/her. It was stated:

> It is an elementary rule that specific laws should be applied to appropriate cases. More importantly, the squatting problem is not a simple matter that can be completely solved by just resorting to the expediency of demolition. The problem transcends the socio-economic and political spheres. For this reason, the government has harnessed its resources and deviced [sic] the squatters with material needs, sites for resettlement to sustain their upliftment and well-being. Unfortunately, the Building Official is not one of those government officers who directly charges [sic] with the enforcement of these laws.

Thus, Ministry Order No. 31 concluded, "whenever structures subject of a complaint for demolition/condemnation pertains to a squatter, *the case against him should be dismissed outright and matter referred to the appropriate agency enforcing the anti-squatting laws.*"

38. P.D. No. 1096, §309 (1977).

F. Local Government Code

Under the Local Government Code of 1991, mayors of municipalities and cities may require owners of illegally constructed houses, buildings or other structures to obtain the necessary permit, and may order the demolition or removal of said house, building or structure within the period prescribed by law or ordinance.[39]

City and town councils may declare, prevent or abate any nuisance.[40]

III. Statutory Regime on Eviction of Urban Poor Dwellers

As stated, the statute which gives life to the constitutional mandate to afford protection in cases of eviction of urban dwellers is Section 28 of Republic Act No. 7279. Ironically, this provision of law begins with an enumeration of cases when evictions of underprivileged and homeless citizens may take place, *i.e.*, those residing in danger areas, public places, infrastructure project sites, and those who are subjects of a court order for eviction.

The protective requirements under Section 28 consist of: a) adequate consultation; b) adequate relocation; and c) mandatory procedures.

On 24 September 1992, the Housing and Urban Development Coordinating Council (HUDCC) and the Department of Interior and Local Government (DILG) approved implementing rules and regulations to ensure the observance of proper and humane relocation and resettlement procedures mandated by the UDHA.[41]

Also, Section 44 of the UDHA imposed a moratorium on the eviction of all Urban Development and Housing Program beneficiaries for a period of three years from effectivity of the law. This moratorium expired on 27 March 1995. But the protection given to underprivileged and homeless citizens under Section 28 still holds.

A. Adequate Consultation

The requirement of adequate consultation is of constitutional origin. Section 28 elaborates that the matter to be discussed during this important step is the resettlement of the families sought to be evicted. Needless to say, consultation also involves the affected communities in the areas where they are to be relocated.

Section 3 of the UDHA, however, defines "consultation" in more general terms:

39. Local Government Code of 1991, R.A 7160, §§ 444(b)2-vi; 455(b)3-vi (1991).

40. *Id.* §§ 447(a)4-1; 458(a)4-1.

41. *Hereinafter referred to as* HUDCC-DILG Implementing Guidelines.

> "Consultation" refers to the constitutionally mandated process whereby the public on their own or through peoples' organizations, is provided an opportunity to be heard and to participate in the decision-making process on matters involving the protection and promotion of its legitimate collective interests, which shall include appropriate documentation and feedback mechanisms.

Under this broad definition of consultation, the HUDCC-DILG implementing rules and regulations provide occasions when opportunities to be heard and to participate in decision-making processes are afforded to subjects of eviction:

> a) Community Relations Operation. The demolishing entity (be it the national or local government) shall meet affected families to explain the government's shelter program, the need to relocate, procedures for relocation and resettlement, and schedules for census and tagging.[42]
>
> b) Information Drive on Resettlement Site. The demolishing entity shall meet the qualified families for resettlement to discuss facilities and services in resettlement projects and obligations and responsibilities of affected families.[43]
>
> c) Consultation Proper. This involves a series of meetings to discuss the following: necessity of the demolition, available options other than resettlement, possible relocation sites, advantages of voluntary dismantling, dismantling and resettlement procedures, submission of requirements, school accommodation of children, roles of agencies involved, and other problems and issues to ensure a peaceful and orderly relocation.[44]
>
> d) Feedback Meetings. There shall be two feedback meetings within twenty days from issuance of the notice of demolition.[45]
>
> e) Final Meeting. There shall be one final meeting before actual demolition.[46]

B. Adequate Relocation

The adequacy of a relocation site depends upon its permanent or temporary nature. A permanent relocation site refers to a socialized housing area characterized by the presence of basic services as defined by Section 21 of the UDHA, where relocatees are brought for permanent resettlement.[47] A temporary relocation site refers to a site accessible to major roads with potable water to which relocatees are brought pending determination by the local government unit in coordination with the National Housing Authority (NHA) of a permanent relocation site. Should a permanent relocation site not be determined within one year, the temporary relocation site becomes a socialized

42. HUDCC-DILG Implementing Guidelines, § 3 (a) (2.2).

43. *Id.* § 3 (c) (7).

44. *Id.* § 3 (e) (1).

45. *Id.* § 3 (e) (4).

46. *Id.* § 3 (e) (4).

47. *Id.* § 1 (m).

housing area. If, however, the families are transferred to a temporary site, subsequent relocation must only be to a permanent resettlement site.[48]

Basic services, under Section 21, are potable water, power, and electricity, an adequate power distribution system, sewerage facilities and an efficient and adequate solid waste disposal system, and access to primary roads and transportation facilities. The provision of other basic services and facilities such as health, education, communication, security, recreation, relief, and welfare shall be planned and shall be given priority for implementation by the local government unit and concerned agencies in cooperation with the private sector and the beneficiaries themselves.

Resettlement of persons living in danger areas, however, require provisions for relocation or resettlement sites with basic services and facilities and access to employment and livelihood opportunities sufficient to meet the basic needs of the affected families.[49]

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 NHA with the assistance of other government agencies within forty-five (45) days from the service of notice of final judgment by the court, after which period the said order shall be executed. This is subject to the provision that should relocation not be possible within the same 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 units concerned.[50]

During the Bicameral Conference Committee proceedings to reconcile the conflicting provisions between then House Bill No. 34310 and Senate Bill No. 234, Senator Lina stated that it would be a matter of judicial notice that when a final judgment is rendered in an ejectment case involving underprivileged and homeless citizens, the court is under obligation to serve notice of final judgment to the local government unit and the NHA.[51] Hence, the 45-day period should commence upon notice of final judgment to the LGU or the NHA.[52]

48. *Id.* § 1 (n).

49. UDHA, § 29.

50. *Id.* § 28 (8).

51. BICAMERAL CONF. COMM. ON URBAN PLANNING, HOUSING AND RESETTLEMENT, URBAN DEVELOPMENT AND HOUSING ACT OF 1992 at 246 (January 27, 1992). [hereinafter BICAM. CONF.]

52. *Id.* at 248.

Also, the legislative intent seems to insist upon relocation even after the lapse of the 45-day period, execution of the eviction order, and payment of financial assistance.[53]

C. Mandatory Procedures

The mandatory procedures under Section 28 are the following:

a) notice upon the affected persons or entities at least thirty days prior to the date of eviction or demolition;

b) presence of local government officials or their representatives during eviction or demolition;

c) proper identification for all persons taking part in the demolition;

d) execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;

e) no use of heavy equipment for demolition except for structures that are permanent and of concrete materials; and

f) proper uniforms for members of the Philippine National Police (PNP) who shall occupy the first line of law enforcement and observe proper disturbance control procedures.

Emphatically, the legislative intent is to apply these mandatory procedures to evictions on the basis of court orders.[54]

The implementing rules and regulations on Section 28 contain elaborate provisions on Pre-Relocation, Relocation, and Post-Relocation procedures which supply the details to the statutory requirements.

IV. THE COURTS SPEAK

A. Procedural Context

Cases involving Section 28 usually arise out of three scenarios:

(1) Summary Ejectment Scenario

COMPLAINT FOR EJECTMENT (MTC)
↓
DECISION (MTC)
↓
ORDINARY APPEAL (RTC)
↓
PETITION FOR REVIEW (CA)
↓
PETITION FOR REVIEW ON CERTIORARI (SC)

53. *Id.* at 242.

54. *Id.* at 233.

(2) Injunction/Prohibition Scenario

ORIGINAL ACTION (RTC)
↓
DECISION (RTC)
↓
ORDINARY APPEAL (CA)
↓
PETITION FOR REVIEW ON CERTIORARI (SC)

(3) Interlocutory Order Scenarion

ORDER OF EXECUTION (SUMMARY EJECTMENT)/DENIAL OF APPLICATION FOR TRO/
WRIT OF PRELIMINARY INJUNCTION
↓
PETITION FOR CERTIORARI (CA/SC)
↓
PETITION FOR REVIEW ON CERTIORARI (SC)

B. Supreme Court

1. The Marcos Decrees

Historically, the Supreme Court has been restrictive in its interpretation of pro-urban poor legislation. A long line of cases involving the Marcos Urban Land Reform Law, P.D. 1517, exemplify the inflexible stance assumed by the Court when confronted with the issue as to whether the urban poor involved in the case should receive the benefits of the law. It has offered so many reasons why the so-called right of first refusal under Section 6 of P.D. 1517, and the seemingly blanket protection against eviction under P.D. 2016 cannot be observed.

In *Bejer v. Court of Appeals,*[55] the Court held that P.D. Nos. 1517 and 2016 require that the area must be defined and proclaimed to be within the Urban Land Reform Zone, i.e., the 245 depressed areas covered by Proclamation No. 1967 and within the areas of priority development (APD) and zonal improvement program (ZIP) of the government. The decrees do not apply to areas only being recommended for feasibility study.

In *Valdelion v. Tengco,*[56] the Court ruled that the right of first refusal cannot be exercised where the landlord categorically manifests that the subject property is not for sale or intended to be sold.

In *Nidoy v. Court of Appeals,*[57] the Court did not place apartment dwellers within the realm of the urban land reform laws. In addition, the Court ruled that P.D. 2016 extended only to legitimate tenants who have been leasing the land on which they have constructed their homes for ten years or more from 11 June 1978, the date of effectivity of P.D. 1517 and in land proclaimed as an

55. 169 SCRA 566 (1989).
56. 141 SCRA 321 (1986).
57. 214 SCRA 394 (1992).

APD or a ZIP. In *Vergara v. Intermediate Appellate Court,*[58] the Court ruled that reference to "slum" or "depressed community" under P.D. 2016 did not expand the scope of beneficiaries of the law, but only added places or properties covered by it.

In *Bermudez v. Intermediate Appellate Court*[59] and *Zansibarian Residents Association v. Municipality of Makati,*[60] only legitimate tenants were envisaged within the scope of P.D. 1517. Legitimate tenants were defined as rightful occupants of the land and its structures, and not those whose presence on the land is merely tolerated or without the benefit of a contract.

In *Santos v. Court of Appeals,*[61] the right of first refusal could not be exercised if both the land and the building leased belonged to the lessor. A rigid application of the urban land reform law was patent in *Lagmay v. Court of Appeals,*[62] where the relatively liberal Second Division composed of then Justices Paras *(ponente),* Melencio-Herrera (chair), Padilla, Sarmiento and Regalado held that the right of first refusal under Section 6 is not "self-executing." Further, executive acts, like the organization of the Urban Zone Expropriation and Land Management Committee, are necessary to determine the terms and conditions of the sale in the exercise of the lessee's right of first refusal. Mr. Justice Paras, however, also pointed out that the urban poor tenants were given a three-month period to exercise an option to buy, which they failed to do. But just the same, the requirement of governmental action to organize the committee diluted the right of first refusal.

Lagmay was reiterated in *Parañaque Kings Enterprises v. Court of Appeals.*[63]

2. UDHA Cases

i. "Evading" the Constitutionality Issue

The first case to reach the Supreme Court involving the UDHA was *Macasiano v. National Housing Authority.*[64] As a consultant of the Department of Public Works and Highways (DPWH), Police General Levy Macasiano challenged the constitutionality of Sections 28 and 44 of the law. He asserted that because of such provisions of law, he "[was] unable to continue the demolition of illegal structures which he assiduously and faithfully carried out in the past." As

58. 185 SCRA 29 (1990).
59. 143 SCRA 351 (1986).
60. 135 SCRA 235 (1985).
61. 128 SCRA 428 (1984).
62. 199 SCRA 501 (1991).
63. 268 SCRA 727 (1997).
64. 224 SCRA 236 (1993).

a taxpayer, he alleged that "he [had] a direct interest in seeing to it that public funds are properly and lawfully disbursed."

The Court, in addressing Gen. Macasiano's issues, took a procedural turn. Through Mr. Justice Davide, it disposed of the case by invoking the basic principle in political law that before the Supreme Court may exercise its power of judicial review, the constitutional question must be "raised by a proper party." Gen. Macasiano had not shown that he was vested with any authority to demolish obstructions and encroachments on properties of the public domain, much less on private lands. Likewise, Gen. Macasiano did not claim to be an owner of urban property whose enjoyment and use would be affected by the challenged provisions of the UDHA. For lack of so-called *locus standi*, the Court dismissed the case.

The Court did address the issue of constitutionality, finding no "indubitable ground" for the constitutional challenge. It cited the case involving the challenge on the Omnibus Investments Code of 1987,[65] upholding the presumption that acts of political departments of government are valid. A "clear and unmistakable showing to the contrary" was absent in General Macasiano's case.

In the past, the Supreme Court has ruled in the *Emergency Powers Cases*[66] that *locus standi* technicalities can be brushed aside because of "transcendental importance to the public of certain cases." Hence, in *Kilosbayan, Inc. v. Guingona,*[67] the matter of the lottery contract involving the Philippine Charity Sweepstakes Office (PCSO) was considered a matter of "transcendental importance" which warranted a substantive decision from the Court, regardless of whether Kilosbayan, Inc. had *locus standi*.

Likewise, in *Kilusang Mayo Uno Labor Center v. Garda,*[68] the *locus standi* of KMU was raised when it filed a case to assail Department of Transportation and Communication and Land Transportation Franchising and Regulatory Board (LTFRB) issuances which, among others, authorized jeepney and provincial bus operators to increase or decrease the prescribed transportation fares. The Court ruled that "[a]ssuming *arguendo* that petitioner (KMU) is not possessed of the standing to sue, this court is ready to brush aside barren procedural infirmity and recognize the legal standing of the petitioner in view of the transcendental importance of the issues raised."

65. Garcia v. Exec. Secretary, 204 SCRA 516 (1991).

66. *See* Araneta v. Angeles, G.R. No. L-2756; Rodriguez v. Tesorero de Filipinas, G.R. No. L.-3054; Guerrero v. Commissioner of Customs, G.R. No. L-3055; Barredo v. Commission on Elections, G.R. No. L-3056, 84 Phil. 368 (1949) [consolidated cases].

67. 232 SCRA 110 (1994).

68. 239 SCRA 386 (1994).

Eventually, *Kilosbayan v. Morato*[69] slammed the door on *locus standi* opportunity in relation to questioning a PCSO contract involving on-line lottery. But cases like *Tatad v. Garcia*[70] and *Tatad v. Secretary of the Department of Energy*[71] maintained the "transcendental importance" doctrine, and managed to override *locus standi* issues.

A case could be made for correlating the constitutional claim and standing to sue. Mr. Justice Mendoza, in *Tatad v. Garcia,* opined that the Court found standing in the first *Kilosbayan* case because it subsequently granted relief to petitioners by invalidating the challenged statutes or governmental actions.[72]

But in a case of high social justice import such as *Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform,*[73] *locus standi* was brushed aside by the Court. Mr. Justice Cruz unleashed his distinguished prose in defending the Comprehensive Agrarian Reform Law (CARL). Anent the question of *locus standi,* the Court proclaimed that "even if ...[petitioners] are not covered by the definition, it is still within the wide discretion of the Court to waive the requirement and so remove the impediment to its addressing and resolving the serious constitutional questions raised."

One wishes that Mr. Justice Davide would have delved into a substantial discussion on the constitutional bases for the UDHA, akin to the elaborate defense of constitutional agrarian justice in *Association of Small Landowners*. That urban poor concerns are of no "transcendental importance" could be an engaging lament. But just the same, *Macasiano v. National Housing Authority* should still be claimed as a rousing victory for advocates of constitutional just and humane eviction mandates. After all, the attacks launched by Gen. Macasiano, e.g. deprivation of property without due process of law and without compensation, and rewarding unlawful acts,[74] were the stereotype objections to Section 28. For Mr. Justice Davide to proclaim that such attacks were not "indubitable grounds" to declare Section 28 unconstitutional is in and of itself a strong statement for just and humane evictions.

69. 246 SCRA 540 (1995).

70. 243 SCRA 436 (1995).

71. 281 SCRA 330 (1995).

72. Tatad v. Garcia, 243 SCRA at 474-75.

73. 175 SCRA 343 (1989).

74. Macasiano v. National Housing Authority, 224 SCRA 236, 244 (1993).

ii. A Mistaken Reading of Section 28

Banson v. Court of Appeals[75] involved an ejectment case resolved in favor of the landowner. The urban poor occupants urged that P.D. 1517 and R.A. 7279 should apply. The Supreme Court practically ignored such a contention.

A curious aspect of this decision is that one statement by *ponente* Mr. Justice Quiason, who asserted that P.D. 1517 and R.A. 7279 did not apply, because both laws require the urban poor dweller to be a "legitimate tenant" before its salient provisions can be applied. This, of course, was plain legal error. R.A. 7279 and Section 28 do not speak of "legitimate tenants," but "underprivileged and homeless citizens." Could this statement by Mr. Justice Quiason reflect a judicial misconception and misinterpretation of the law?

iii. The "Rascals" Case

No other Supreme Court case pertaining to the UDHA would have more impact than *Galay v. Court of Appeals*.[76] It is the definitive case insofar as court orders for demolition involving underprivileged and homeless citizens are concerned. In the thick of Mr. Justice Francisco's *ratio decidendi*, he stated: "[c]ompassion for the poor is an imperative of every humane society, but only when the recipient is not a rascal claiming an undeserved privilege." Finding his diatribe against "rascals" of society inadequate, Mr. Justice Francisco summed up his exposition in this manner:

> While we sympathize with the millions of our people who are unable to afford the basic necessity of shelter, let alone the comforts of a decent home, this sympathy cannot extend to squatting, which is a criminal offense. Social justice cannot condone the violation of law nor does it consider that very wrong to be a justification for priority in the enjoyment of a right. This is what the petitioner wants us to grant him. But we cannot heed his unjust plea because the rule of law rings louder in our ears.[77]

It became highly probable that *Galay* would be used by UDHA detractors as an affirmation of their treatment of the law as "unfair," a "bleeding hearts cause," or a "squatter-coddling measure."

Faster than one could ring the death bell for Section 28, it is submitted that *Galay* must be taken into context. It is not an affirmation of the cause of UDHA detractors. *Galay* must be placed amid the facts and circumstances surrounding the decision of the Supreme Court.

First of all, *Galay* involved an ejectment case. A certain Virginia Wong, represented by her administrator, filed an ejectment suit against urban poor dwellers who illegally occupied her 405 square meter lot in Quezon City. The

75. 246 SCRA 42 (1995).

76. 250 SCRA 629 (1995).

77. *Id.* at 638.

Metropolitan Trial Court ruled in favor of Wong, and ordered the eviction of the urban poor defendants. The Regional Trial Court affirmed the MTC decision on appeal. The Court of Appeals dismissed the defendants' petition for review on the basis of a technicality.

A writ of execution was issued by the MTC. In an attempt to prevent execution, the urban poor defendants filed an injunction case before the RTC, asserting necessary compliance with Section 28 of the UDHA. The RTC denied the petition for injunction. On petition for certiorari, the Court of Appeals issued a writ of preliminary injunction to temporarily enjoin the ejectment of urban poor defendants.

Wong filed a motion to lift the writ of preliminary injunction, contending that the People's Bureau of Quezon City had been notified, and that more than 45 days lapsed since notice was effected. The Court of Appeals rendered a decision which ordered the People's Bureau to relocate the urban poor defendants or to instead pay financial assistance to the same urban poor defendants after a specified date. More importantly, the decision ordered the urban poor defendants to immediately vacate the subject premises.

On petition for certiorari before the Supreme Court, the above decision of the Court of Appeals was affirmed.

Second, *Galay* involved a court order for demolition.

The source of protection to ensure a just and humane demolition as mandated by the 1987 Constitution is none other than Section 28 of the UDHA. *Galay* obviously involved Section 28(c) on court orders for demolition. When court orders for demolition are concerned, the requirement of adequate relocation is somewhat modified by the 45-day rule.

In fact, when the urban poor defendants raised the argument that the Court of Appeals decision embodied a compromise agreement to which they never assented, Mr. Justice Francisco pointed out that:

> [n]owhere did it appear nor can it be inferred therefrom that the [Court of Appeals] disposition took into account any agreement or concessions made by the parties that is indicative of judgment on a compromise....
>
> The dispositive portion of the decision is very explicit in exclusively adverting to R.A. 7279 as the basis of the judgment....
>
> Resultingly, [the urban poor defendants'] eviction must now proceed in accordance with Sec. 28(c)(8)....[78]

Mr. Justice Francisco disposed of the urban poor defendants' plea to invoke Section 28 (c)(8) with, ironically, a plain and strict application of this provision of law. Given the fact that the final judgment of the court on the ejectment

78. *Id.* at 635.

case was issued way back 16 February 1994 (the date when the appeal on the ejectment case was dismissed outright by the Court of Appeals), by the time judgment by the Court of Appeals on the injunction case was rendered on 20 September 1994, the 45-day period within which the local government unit and the NHA should provide relocation for underprivileged and homeless citizens who were the subject of a court order for eviction and demolition had already lapsed.

Likewise, the claim that lot owner Wong should provide for a relocation site was rejected because Section 28(c)(8) was clear. Proclaimed Mr. Justice Francisco, "[t]he task of relocating the homeless and underprivileged shall be the responsibility of the local government unit concerned and the National Housing Authority with the assistance of the other government agencies."

Aside from invoking the UDHA, the urban poor defendants relied upon the social justice provisions of the Constitution. This contention was flatly rejected.

But what to make of Mr. Justice Francisco's denunciation of so-called "rascals" of society? Those statements must be contextualized, or else detractors of the UDHA should be ill-equipped with yet another *ad hominem* way out of the urban poor problem.

The reference to the urban poor defendants as "rascals" must be placed alongside the facts and circumstances that surrounded *Galay*. Also, such a statement originally emerged from cases made under specific facts and circumstances.[79] It should not be arbitrarily applied to the vast number of cases involving or which may involve underprivileged and homeless citizens sought to be evicted from danger areas, public places, infrastructure project sites, or even by virtue of court orders for eviction.

In addition, the UDHA itself would create a glaring distinction between underprivileged and homeless citizens and professional squatters, or "individuals or groups who occupy lands without the express consent of the landowner and who have sufficient income for legitimate housing."[80] We can consider professional squatters as the true "rascals" of society referred to in *Galay*. To lose sight of these careful distinctions and resort to wholesale name-calling undermines a comprehensive approach towards urban development, which includes observing a just and humane eviction under Section 28.

Finally, while *Galay* is no catalyst in Section 28 advocacy, it is no setback either. For the first time, the Supreme Court clearly recognized Section 28,

79. The reference to "rascals of society" appeared in *PLDT v. NLRC*, 164 SCRA 671 (1988) and *PNCC v. NLRC*, 170 SCRA 210 (1989).

80. UDHA, § 3(m).

particularly the rule on adequate relocation in the event of a court-ordered demolition.

The Court managed to quote with approval this excerpt from the Court of Appeals decision which it sustained:

> The judgment in question has recognized not only petitioner's right not to be ejected sans the 45-day notice to the Urban Poor Affairs Office, but also the right to a daily allowance of PhP145.00 for each day of delay or relocation, for a period of not more than sixty (60) days, should there be a delay in their relocation, as mandated by law.

In terms of UDHA litigation, *Galay* succeeds in suggesting the mechanism within which the local government unit and the NHA may be impleaded during eviction and demolition proceedings involving underprivileged and homeless citizens. It turns out that a simple notice to the LGU or the NHA would suffice.

iv. A Glaring Omission

In *Puncia v. Gerona*,[81] the Court, through Mr. Justice Vitug, ruled that court orders for eviction were not covered under the moratorium provisions of the law, but were in fact allowed by Section 28.[82] There was, however, no discussion as to the humane demolition process in Section 28. It would appear in this case that the Court would allow court orders for demolition without the protective mantle of Section 28. After all, it is not the fleeting moratorium provisions of Section 44 that constitute the essence of a just and humane eviction mandate. Rather, it is the permanent protection afforded by Section 28 that matters more.

v. When A Court-ordered Demolition Meets Expropriation

Filstream International v. Court of Appeals[83] presented a unique perspective on an eviction involving underprivileged and homeless citizens. Urban poor families were sued in an ejectment case filed by the owner of adjacent parcels of land in Tondo. The landowner, Filstream International, prevailed from the MTC all the way up to the Court of Appeals.

During the pendency of the ejectment proceedings before the MTC, however, the City of Manila approved an ordinance authorizing then Mayor Alfredo S. Lim to initiate the acquisition of the subject parcels of land. Subsequently, the City of Manila approved another ordinance declaring the expropriation of the same parcels of land, to be sold and distributed to qualified tenants pursuant to the city government's Land Use Development Program.

81. 252 SCRA 425 (1996).

82. UDHA, § 44.

83. 284 SCRA 716 (1998).

Eventually, the City of Manila filed an expropriation case against Filstream International. The trial court issued a writ of possession in favor of the City of Manila, which ordered the transfer of possession over the disputed premises to the City of Manila. In the meantime, the RTC had already affirmed the MTC ejectment decision in favor of the landowner. This decision later became final and executory.

Filstream International filed a motion to dismiss the expropriation case and to quash the writ of possession issued in favor of the City of Manila. The RTC issued an order denying these motions. The Court of Appeals dismissed the petition filed by Filstream International on the basis of a technicality.

Before the Supreme Court, Mr. Justice Francisco began with an affirmation of the revitalized eminent domain power of the City of Manila under the Local Government Code of 1990. The provisions of the UDHA on priorities in acquisition of land for socialized housing purposes were also conceded.

Mr. Justice Francisco noted that, under the priorities in and modes of acquisition of land for socialized housing under Sections 9 and 10 of the UDHA, there are limitations with respect to the order of priority in acquiring private lands and in resorting to expropriation proceedings as a means to acquire the same. He observed that private lands rank last in the order of priority for purposes of socialized housing.

Thus, Mr. Justice Francisco concluded:

> We have carefully scrutinized the records of this case and found nothing that would indicate that respondent City of Manila complied with Sec. 9 and Sec. 10 of R.A. 7279. Petitioner Filstream's properties were expropriated and ordered condemned in favor of the City of Manila sans any showing that resort to the acquisition of other lands listed under Sec. 9 of R.A. 7279 have proved futile. Evidently, there was a violation of petitioner Filstream's right to due process which must accordingly be rectified.[84]

This case illustrates how a socialized housing program by the local government unit, such as the expropriation component of the Land Development Program of the City of Manila, can set the stage for a just and humane eviction. But Mr. Justice Francisco equated the list of priorities in and modes of land acquisition under the UDHA with the constitutional due process guarantee on the side of the landowner.

A reiteration of how the very concept of urban land reform under Section 9, Article XIII of the Constitution connotes a regulation of land ownership in the name of social justice, and how a due process attack on the UDHA failed in *Macasiano* might require a second look on the *Filstream International* doctrine.

84. *Id.* at 732.

More importantly, in *Philippine Columbian Association v. Panis,*[85] the Supreme Court, through Mr. Justice Quiason, unequivocally affirmed the power of eminent domain on the part of the City of Manila to expropriate private lands and subdivide these lands into home lots for sale to *bona fide* tenants or occupants thereof. Section 9, Article XIII was established as legal authority. The exercise of the city's eminent domain power for socialized housing purposes even mustered the public use requirement, when the Court proclaimed that the fact that only a few could actually benefit from the expropriation of the property does not diminish its public use character.

Further, Mr. Justice Quiason pointed out that the entire expropriation process before the trial and appellate courts constituted a fulfillment of the due process requirement.

In *Republic v. Tagle,*[86] the Court, through Mr. Justice Panganiban, upheld the vesting of possession *de jure* upon issuance of a writ of possession by virtue of the exercise of the power of eminent domain. In such a case, an ejectment suit pertaining to the very issue of possession *de jure* should not prevail over a writ of possession issued in the State's favor. Besides, the issuance of such writ of possession is a supervening event which may cause the stay of execution of the ejectment decision in the landowner's favor.

vi. Moratorium Application

In *Serapion v. Court of Appeals,*[87] the Court dismissed a move by defeated urban poor defendants in an ejectment case to recall a writ of execution for their eviction from the subject premises. The urban poor defendants had raised the "guidelines for the eviction of urban and rural poor dwellers set forth in the Constitution and R.A. No. 7279" as their last line of defense. This move failed. But on appeal of the main ejectment case before the RTC, the MTC judgment in favor of the landowner was reversed, in view of the three-year moratorium on evictions and demolitions under Section 44.

Before the Supreme Court, through Mr. Justice Bellosillo, the moratorium provision was scrutinized. Accordingly:

> The fact that petitioners claim to be homeless and under-privileged citizens living in an urban or urbanizable area as the terms are defined under the law does not automatically entitle them to invoke the moratorium provision on eviction. As worded, Sec. 44, Art. XII, categorically applies the moratorium to *program beneficiaries* or those who possess the qualifications set forth in Sec. 16, Art. V, namely, (a) must be Filipino citizens; (b) must be underprivileged and homeless citizens, as defined in Sec. 3, Art. I of the Act; (c) must not own any real property whether in the urban or

85. 228 SCRA 668 (1993).

86. 299 SCRA 549 (1998).

87. 295 SCRA 689 (1998).

rural areas; and, (d) must not be professional squatters or members of squatting syndicates.

Persons who meet the foregoing eligibility criteria may then be included in the list of eligible socialized housing program beneficiaries upon their registration in accordance with the procedure set forth in the *Implementing Rules and Regulations Governing the Registration of Socialized Housing Beneficiaries* issued by the Department of Interior and Local Government and the Housing and Urban Development Coordinating Council. However, the listing is without prejudice to certain validation procedures to determine full eligibility that may be adopted by the government shelter agency or the local government unit responsible for the socialized housing program/project in the locality concerned.[88]

Once again, as in *Puncia v. Gerona,* the Supreme Court had placed Section 44 on a pedestal, having overlooked the more substantial and permanent protection provided in cases of eviction of underprivileged and homeless citizens under Section 28. To be a "program beneficiary" under Section 44 is different from being an "underprivileged and homeless citizen" under Section 28. Besides, in their motion to recall the writ of execution the urban poor defendants had invoked the "guidelines on eviction" under UDHA. They were not invoking Section 44 *per se.* Unfortunately, references made by the RTC judge to Section 44 gave it the fullest attention it did not deserve.

vii. Restrictive Constitutional Construction

People v. Leachon[89] is a case brought against an Occidental Mindoro RTC judge who dismissed Anti-Squatting Law[90] cases for having been impliedly repealed by Sections 9 and 10, Article XIII of the Constitution. The judge reasoned that:

[i]f all the accused were convicted and ordered evicted, it will run counter to the constitutional provisions because the conviction and eviction will not be in a just and humane manner as the government has not yet undertaken the resettlement of urban and rural dwellers, and neither has the government consulted all the accused as to where they should be relocated.[91]

The Provincial Prosecutor filed a special civil action for certiorari and mandamus against him. The Court, through Mr. Justice Purisima, recognized that what makes the eviction and demolition of urban or rural poor dwellers illegal or unlawful pursuant to the Constitution is when the same are not done in accordance with law and in a just and humane manner.

But Mr. Justice Purisima went on to interpret the constitutional phrases in this light:

88. *Id.* at 697.

89. 296 SCRA 163 (1998).

90. Presidential Decree No. 772 (1975).

91. *Leachon,* 296 SCRA at 168.

What is meant by "in accordance with law" and "just and humane manner" is that the person to be evicted be accorded due process or an opportunity to controvert the allegation that his or her occupation or possession of the property involved is unlawful or against the will of the landowner; that should the illegal or unlawful occupation be proven, the occupant be sufficiently notified before actual eviction or demolition is done; and that there be no loss of lives, physical injuries or unnecessary loss of damage to properties. [92]

Considering that a P.D. 772 criminal action affords the accused due process of law before a court of competent jurisdiction, consequences of conviction will not run afoul of the Constitution. Besides, added Mr. Justice Purisima, "P.D. 772 conforms with the 1987 Constitution, in that it protects the rights of a property owner against unlawful and illegal intrusion." Hence, P.D. 772 should have been constitutional, had it not been for the law which expressly repealed it.[93]

The Court's analysis in relation to the constitutionality of P.D. 772 is all water under the bridge. But to equate the phrase "in accordance with law" with procedural due process subtracts from the point which the Constitutional Commission wanted to make. By resorting to the phrase "in accordance with law" in lieu of "in accordance with due process," the Commission, in effect, left the parameters of procedural and substantive due process and the doctrine of hierarchy of rights to legislative wisdom. Indeed, no less than Senator Lina himself affirmed that the protections afforded underprivileged and homeless citizens in Section 28, when observed, would amount to an eviction "in accordance with law."

C. Court of Appeals

1. The Marcos Decrees

The Court of Appeals was just as exacting insofar as application of the right of first refusal in P.D. 1517 and prohibition against eviction in P.D. 2016 were concerned.

In *Terrado v. Pechaten Corporation,*[94] for instance, Mr. Justice Abad Santos clarified that the right of first refusal entails qualification as a tenant in order to preclude ejectment from the leased premises in case the landlord intends to sell the leased premises to third persons. When the urban poor defendant invoked P.D. 1517 in an ejectment action against him, he was no longer a legitimate tenant of the property, as the contract of lease between himself and the landowner had already expired.

92. *Id.* at 169.

93. An Act Repealing Presidential Decree No. 772, Republic Act No. 8368 (1997).

94. C.A.-G.R. SP No. 45790 (May 26, 1998).

In *Ornillo-Nolada v. Francisco,*[95] through Mr. Justice Rivera, the Court upheld the very restrictive *Lagmay* application made by the Supreme Court, maintaining that *Lagmay* required having to bring the subject property into the operation under the decree.

In *Feliciano v. Philippine National Railways,*[96] the Court, speaking through Mr. Justice Umali, reiterated the rule that the right of first refusal is a grant only to legitimate tenants who have resided in the land for ten years or more and residents who have continuously legally occupied the land for ten years. It was easy for the Court to declare that an absentee structure owner who spent time in the United States disqualified her from the right of first refusal to purchase the lot she rented for the past thirty years.

In *Durvin v. Lim,*[97] the Court, speaking through Mr. Justice Abad Santos, proclaimed that possession by tolerance did not make urban poor occupants tenants under the law. Clearly, they had been occupying the subject land without the benefit of a contract between them and the landowner.

In *Dela Rosa v. Regional Trial Court Makati, Branch 136,*[98] speaking through Mr. Justice Labitoria, the Court ruled that the urban poor defendants failed to exercise the right of first refusal within the three-month period given by the landowner. If they were not agreeable to the price offered, they should have communicated it to the landowner immediately. Therefore, a case for ejectment would prosper against them.

In *Amagna v. Portajada,*[99] the Court was faced with the issue of whether to eject a lessee who failed to pay three months' rent, from an area identified as an area for priority development under P.D. 1517 and P.D. 2016. Through Mme. Justice Montoya, the ejectment of the non-paying lessee was ordered. Invoking *Lagmay,* it was again noted that further acts, like organization of the required committee, were yet to be done. Moreover, citing *Valdellon* and *Bermudez,* it was held that P.D. 1517 finds no application where the landlord has no intention of selling the property to anyone. It only applies where the owner of the property intends to sell it to a third party. Furthermore, the non-payment of three-month rental as a ground for judicial ejectment under the Rent Control Law[100] could not override the prohibition against ejectment of tenants under P.D. 2016. Otherwise, the landowner would be placed in a situation where the tenant can stay forever in her premises without paying rentals. The

95. C.A-G.R. C.V. No. 44349 (May 28, 1998).
96. C.A.-G.R. C.V. No. 43371 (July 31, 1998).
97. C.A-G.R. S.P. No. 44792 (Aug. 13, 1998).
98. C.A.-G.R. S.P. No. 48601 (Oct. 29,1998).
99. C.A. G.R. S.P. No. 48405 (Nov. 26, 1998).
100. Batas Pambansa Blg. 877 (1985), *as amended.*

lessee was deemed to have ceased to be a legitimate tenant when she failed to pay her rentals for at least three months.

2. UDHA CASES

i. Prove Program Beneficiary Status

In *Sawa-an v. Allarde,*[101] the Court was faced with the application of Section 44 in a court-ordered eviction. But, unlike the Supreme Court in the later case of *Serapion,* Mr. Justice De Pano went beyond the program beneficiary requirement and observed that the building involved was not located in a "blighted area." Also, there was the hair-splitting reference to the phrase "demolition of *their* houses or dwelling units." Considering that the building where the urban poor defendants stayed was owned by the landowner, then the moratorium could not be made to apply.

Exactly four years after *Sawa-an, Ty v. Avecilla*[102] also placed court-ordered evictions outside the coverage of the moratorium; the same was true in *Neira v. Corpus-Cabochan*[103] and *Melendres v. Domogan.*[104]

In both cases, no distinction was made as to the protection afforded by Section 28 with regard to eviction of underprivileged and homeless citizens, and the temporary nature of the moratorium on program beneficiaries in Section 44. After all, the moratorium was imposed to cover cases of eviction which are not authorized by Section 28.[105] The phrase excepting "cases enumerated in Section 28" meant that evictions involving danger areas, public places, sites for infrastructure projects, and court-ordered demolitions may proceed within the three-year period. Such cases already had ample protection under the requirements enumerated in Section 28.[106]

ii. Prove Underprivileged and Homeless Status

In *City of Manila v. Guariña,*[107] the Court treated Section 28 as "excepting clauses" to the general rule that occupying danger areas, public places, infrastructure project sites, and being subjected to court-ordered demolitions would result in a lawful ejectment without qualification. Therefore, it behooved upon urban dwellers sought to be evicted to prove that they are

101. C.A.-G.R. SP No. 2866 (Feb. 26, 1993).
102. C.A.-G.R. SP No. 39888 (Feb. 26, 1997).
103. C.A.-G.R. SP No. 32069 (Mar. 22, 1994).
104. C.A.-G.R. CV No. 49672 (Mar. 22, 1997).
105. *See* BICAM. CONF., *supra* note 51, at 191.
106. *Id.* at 188.
107. C.A.-G.R. SP No. 31852 (Oct. 28, 1993).

within the ambit of Section 28 protection. To do so, they must establish their underprivileged and homeless status.

The case might just as well be a respite from the Section 44 requirement to establish program beneficiary status, but the Court did manage to create a burden of proof on the part of urban poor dwellers to prove underprivileged and homeless status.

The Court was not contented with imposing such a burden of proof. Even assuming that underprivileged and homeless status was established,

> [T]he Urban Development and Housing Law did not intend to place at a standstill their judicial eviction until they shall haved [sic] been relocated by the pertinent local government unit and the National Housing Authority. Paragraph B of said Section 28 limits such relocation to a period of forty- five (45) days from service of notice of official judgment by the court "after which period said order shall be executed. " If the relocation is not possible within the contemplated period, then "financial assistance in the amount of equivalent to [sic] the prevailing minimum daily wage multiplied by six [sic] (60) days shall be extended to the affected families by the local government unit concerned." As it is therefore, an eviction order is required to be executed after expiration of the forty-five day period without prejudice to the giving of financial assistance by the local government to the persons to be evicted. To construe that the relocation of losing parties in an ejectment case is a must and an absolute condition before a court order for their ejectment could be executed, is to leave the prevailing party-litigants at the mercy of local government officials who, if they happen to be at odds with the winning parties, may merely pay no more than lip service to the mandate of the law. Thus, the statute provides a safety valve the requirement [sic] that in case of an impasse, a local government should extend financial assistance to those affected by the eviction.

City of Manila also involved an injunction case to stop demolition efforts by the City of Manila. The aforesaid 45-day period pertained to court orders for eviction. The implementing rules and regulations of Section 28 define a "court order" as a writ of demolition issued by a court of competent jurisdiction.[108] Ordinarily, such a writ would arise out of an ejectment case or one involving delivery or restitution of property in relation to Section 10, Rule 39 of the 1997 Rules of Civil Procedure. There was no case praying for ejectment or delivery or restitution of property in *City of Manila*.

In a case involving a Section 28 challenge of a court order for eviction, the Court in *Magto v. Estrada* [109] also bewailed the failure to establish underprivileged and homeless status. In fact, Mme. Justice Paras noted that an offer to purchase the subject property meant that the individuals to be evicted were not underprivileged. This could have been a case of oversimplification, for both the UDHA and P.D. 1517 recognized some form of a right of first refusal.

108. HUDCC-DILG Implementing Guidelines, *supra* note 41, § 1 (e).

109. C.A.-G.R. SP No. 39025 (Apr. 23, 1997).

iii. Delinquent Tenants

In *United Herrera-Camus Neighborhood v. Sabundayo*,[110] urban poor lessees were sued in an ejectment action for failure to pay rent. In questioning the writ of demolition subsequently issued by the MTC of Malabon, they invoked Section 28. The Court, through then Mr. Justice Tuquero, subscribed to the view of the MTC judge that Section 28 protection should be provided only to "evicted squatters" and not "delinquent tenants." It seems the Court had seen a distinction which was not written into the law:

Delinquency was precisely what urban poor tenants sought to avoid in *Cawan v. Susana Realty*.[111] Tenants designated as such by the lawyer for the landowner filed a petition for consignation pertaining to refused rental payments. Mr. Justice Villarama was careful to distinguish the petitioners from mere "illegal occupants/squatters." Therefore, they could validly exercise their right to first refusal under Section 6 of P.D. 1517, considering the land occupied by the petitioners was certified as one of the areas for priority development.

Mr. Justice Villarama underscored the significance of the policy on urban land reform:

> Urban land reform in the 1970s continued to be a component of [the] national development program under the post-EDSA administration and a more compassionate and humane policy on eviction and resettlement of poor urban dwellers was enshrined in the 1987 Constitution. Republic Act. No. 7279, the "Urban Development and Housing Act of 1992," implements the comprehensive and integrated urban land reform and housing policy that intensified and broadened the benefits granted in earlier presidential issuances.

iv. Section 28 and Possession De Facto

On a petition for review in an ejectment case brought before the Court, losing urban poor defendants in *Cubacob v. Tijam*[112] invoked Section 28. Through Mme. Justice Ibay-Somera, the Court dismissed the petition, because after having "carefully perused the provisions of R.A. 7277 [sic]," it found out that reliance upon said law did not have a direct and legal bearing upon the question of possession *de facto*, which was the crucial determination in ejectment cases. But a careful perusal of Section 28 could have at least revealed the necessity for adequate relocation under paragraph 8 (8) thereof.

110. C.A.-G.R. SP No. 40574 (Nov. 15, 1996).

111. CA.-G.R. CV No. 35171 (Aug. 28, 1998).

112. C.A.-G.R. SP No. 39635 (Nov. 29, 1996).

v. Section 28 and Nuisances

In *Baguinda v. Bersamin*,[113] members of the Christian Muslim Neighborhood Association, Inc. based in Culiat, Quezon City were named respondents in a complaint with the City Engineer/Building Official of Quezon City, for constructing shanties without the necessary electrical, sanitary and building permits. They were eventually ordered to remove such structures, but they failed to do so. Thus, an "Authority to Demolish" was issued by the City Administrator, on the basis of which Task Force Demolition of the Q.C. Government sent notices of demolition.

The shanty owners filed a petition to enjoin all the said local government officials from demolishing their structures. The Court, in an exhaustive *ponencia* by Mr. Justice Callejo, affirmed the police power of the State to prevent or abate nuisances for the protection of lives, health, morals, comfort and general welfare. The National Building Code was identified as the law which specifically defines dangerous and ruinous buildings or structures susceptible of an extra-judicial abatement of a public nuisance. The rules and regulations of the said law allow the Building Official to conduct the requisite investigation in ascertaining whether a building is dangerous or ruinous, in a manner of investigation outlined therein.

When the shanty owners invoked Section 28, Mr. Justice Callejo found no evidence from them to prove that they were underprivileged and homeless citizens. On the contrary, having also claimed that they were the presumptive heirs of the property, they were estopped from claiming that they were underprivileged.

Thus, having failed to establish their right to injunctive relief, there should be no bar for the concerned Q.C. government officials to perform their duties in relation to the National Building Code.

Kahanding Neighborhood Association v. Ponferradalos[114] went a step further by placing the power to abate nuisances *per se* over and above protections afforded by Section 28. The Court, through Mr. Justice Luna, affirmed the denial of an application for a writ of preliminary injunction by urban poor dwellers who occupied Tioco Park, an area owned by the City of Manila. They alleged that the City of Manila sought to evict them without observing the requirements in Section 28. But a closer look at the order denying the application, however, reveals that the respondent judge had "advised" the City of Manila to observe Section 28.

113. C.A.-G.R. SP No. 40327 (Jan. 14, 1997).

114. C.A.-G.R. SP No. 40146 (Mar. 7, 1997).

In *City of Makati v. Tensuan*,[115] shanties along Mascardo and Primo Rivera Sts. were targets of demolition efforts by the city government. The shanty owners filed a petition for mandamus and injunction against the City of Makati, on the basis of violation of Section 28. A writ of preliminary injunction was issued by the RTC judge, "until such time that proper notice, consultation and adequate relocation are complied with." Later, the motion to dismiss filed by the City was denied. The City of Makati filed a petition for certiorari to question the issuance of the said writ.

Through Mme. Justice Aliño-Hormachuelos, the Court reversed and set aside the order granting the writ of preliminary injunction and denying the motion to dismiss. The provisions on public nuisance in the Civil Code were cited and made to prevail over Section 28. At any rate, the Court found compliance with the adequate consultation requirement. It did not, however, address all the other Section 28 requirements.

But in *Renante v. Regional Trial Court of Quezon City, Branch 80*,[116] a certain Rene Bunoan, presumably a Q.C. government official, issued a writ of demolition for violation of the Building Code and other city ordinances, and proceeded to demolish the structures which were the subjects of his writ. The legal authority of Bunoan to issue the writ was not clear. Mr. Justice Vasquez, Jr. spoke for the Court in nullifying the demolition undertaken by Bunoan, because only a court of law can issue an order of demolition. To allow the procedure undertaken by Bunoan would open the floodgates of abuse and possible corruption and a total disregard of our judicial processes to which every citizen is entitled under our Constitution. Needless to state, the UDHA was not invoked as a ground to nullify the Bunoan demolition.

The question of mandatory relocation based on Section 28 in relation to abatement of a public nuisance was also confronted by the Court in *Alpha at Omega Pinagkaisa, Inc. v. Bautista*.[117] In that case, shanties occupying a sidewalk in Valenzuela filed a Petition for Injunction to stop a threatened demolition to be undertaken by the municipal government. Speaking for the Court, Mr. Justice Villarama noted that there was no showing that petitioners were underprivileged and homeless citizens. Also, it was observed that the local government unit had not adopted measures to identify who among the occupants were really entitled to mandatory relocation, in order to weed out professional squatters.

While Mr. Justice Villarama affirmed summary abatement of a nuisance *per se* under the Civil Code, the dispositive portion stated:

115. C.A.-G.R. SP No. 43708 (Sept. 23, 1997).

116. C.A.-O.R. SP No. 46076 (Apr. 21, 1998).

117. C.A-O.R. SP No. 44728 (Dec. 7, 1998).

> WHEREFORE, the petition is hereby DISMISSED for lack of merit. The two (2) orders appealed from are hereby AFFIRMED, with the MODIFICATION that respondent Municipality of Valenzuela, Bulacan, pursuant to R.A. 7279, must coordinate with the Peoples' Bureau (Urban Poor Affairs Office) to identify who among the occupants subject to eviction or demolition are entitled to mandatory relocation from the subject properties. Should the relocation of the petitioners be not finished within 45 days, the Peoples' Bureau shall pay the deserving occupants a daily allowance for every day of delay of relocation but in no case shall such allowance last for more than sixty (60) days.

The Court applied Section 8(8), the rule on relocation in the event of a court-ordered eviction. But, as stated, the implementing rules and regulations defined a court order as a writ of demolition issuing from a court. No such writ of demolition had been issued by any court that would have placed the situation within Section 8(8). Therefore, the demolition should have been enjoined without the 45-day limitation.

In *Del Pilar v. Lim*,[118] the Court, through Mme. Justice Aliño-Hormachuelos, ruled that the issue of whether the UDHA repealed or amended the Civil Code provisions on nuisance is a question of law that is properly cognizable by the Supreme Court.

vi. Court-Ordered Evictions

In *Tonogbanua v. Aguilar*,[119] the Court, through Mme. Justice Vidallon-Magtolis, found it sufficient to proceed with a court-ordered eviction in the face of a Section 28 challenge, even if there was only notice to the local government concerned within 45 days prior to the intended eviction. The rest of Section 28 was virtually neglected. The Court also found occasion to borrow from the *Galay* "rascals" pronouncement of the Supreme Court.

In *Vda. De Lopez v. Discaya*,[120] the Court, through Mme. Justice Aliño-Hormachuelos, refused to stay execution of an eviction order, by the mere fact that Section 28 allowed court-ordered evictions of underprivileged and homeless citizens. Not even the measly notice to the local government concerned required by *Tonogbanua* was established.

In *Bajet v. Imperial*,[121] Section 28(c) was again invoked to justify an eviction on the basis of a court order, without due regard to the other provisions of Section 28. In addition, Mr. Justice Agcaoili was quick to point out that access to land and housing by the underprivileged cannot be unceremoniously used as

118. C.A.-G.R. CV No. 40465 (June 25, 1997).
119. C.A-G.R. SP No. 42115 (Feb. 11, 1997).
120. C.A.-G.R. SP No. 45584 (Jan. 5, 1998).
121. C.A.-G.R. SP No. 48450 (Oct. 9, 1998).

a shield to deprive legitimate landowners of their right to property. The due process clause of the Constitution was cited.

vii. Right of First Refusal

In *Ty v. Avecilla*,[122] the UDHA version of a right of first refusal[123] was raised as a defense in an ejectment case. Through Mr. Justice Imperial, the Court ruled that Section 10 of the UDHA specifies that only government-owned and foreclosed properties which have been acquired by local government units or the National Housing Authority are subject to the right of first refusal on the part of the occupants-beneficiaries. Privately-owned lands such as the lots which is the subject matter of the case that have not been acquired nor foreclosed by local government units or the National Housing Authority are not covered by such a right of first refusal.

viii. Injunction Requirements

In *Melendres v. Domogan*,[124] the Court, speaking through Mr. Justice Imperial, underscored the need to establish two things in order to enjoin efforts by the Baguio City government to demolish a shanty: the existence of a right, and its actual or threatened violation. Given the fact that the party seeking injunction did not possess any right or title to the subject property, then the application must fail.

The rigid standard received a humane interpretation when an RTC judge issued a writ of preliminary injunction to enjoin demolitions on government land in *National Housing Authority v. Velasco*.[125] Several government agencies, including among others the HUDCC and the Sugar Regulatory Administration (SRA), and a private developer were sued in an injunction and prohibition petition filed by an urban poor organization based in the National Government Center in Batasan Hills. Its members raised their ten-year occupancy of the subject premises, not to mention the right of first refusal and Section 28 in the UDHA.

The Court, through Mme. Justice Adefuin-De La Cruz, sustained the issuance of the writ, underscoring the "need for a full-blown hearing in this

122. C.A.-G.R. SP No. 39888 (Feb. 26, 1997).
123. UDHA, §10; Modes of acquisition ...For the purpose of socialized housing, government owned and foreclosed properties shall be acquired by the local government units, or by the National Housing Authority primarily through negotiated purchase. Provided, that qualified beneficiaries who are actual occupants of the land shall be given the right of first refusal.
124. C.A.-G.R. CV No. 49672 (Mar. 22, 1997).
125. C.A.-G.R. SP No. 42305 (Dec. 15, 1997).

case before the respondent court to determine the rights of the parties." She added:

> For what is the use of further hearing of this case if private respondent's members have already been evicted from the premises in question and their houses demolished? The entire proceedings in the respondent court would have been an exercise in futility or moot and academic, if not for the preservative effect of the high writ of injunction. Besides, private respondent's members' clear and positive right to stay in the premises in question pending the outcome of the hearing of the case in the respondent court justifies the issuance of the questioned writ of injunction.

Aside from the two requirements for the valid issuance of an injunction laid down in *Mercedes v. Domogan,* the Court in *National Housing Authority v. Velasco* gave high regard to the ground enjoining acts which may render the judgment ineffectual, pursuant to Section 3(c), Rule 58 of the 1997 Rules of Civil Procedure.

The case of *Gonzales v. Alarcon-Vergara*[126] involved the demolition of shanties along Bonifacio Drive, Intramuros that coincided with the 1996 APEC Leaders' Meeting in the Philippines. A petition for injunction was filed to enjoin the demolition efforts, invoking Sections 9 and 10, Article XIII of the Constitution and Section 28 of the UDHA. The RTC judge dismissed the case.

Through Mr. Justice Velasco, the Court upheld the order of dismissal by the RTC. There was no grave abuse of discretion found by the Court which sufficed to reverse the order. The two requisites for the issuance of an injunction were deemed not satisfied.

> The petitioners have failed to show a clear and indubitable right that will be protected by an injunction. They claim rights to relocation. The final and permanent relocation are still to be done, true. But neither R.A. 7279 nor the Constitution absolutely requires that such be done before eviction and demolition. There is no showing that such will not be done even after the threatened demolition and eviction, so the right to such still hasn't been violated nor threatened. R.A. 7279 even provides a case wherein relocation may not be possible in the set period after which a court order ordering demolition and eviction may be executed and financial assistance may be granted.

Mr. Justice Velasco noted as well that the right to a just and humane manner of eviction was observed by notice and hearing granted to the owners of the shanties. Apparently, there was a July 17, 1996 hearing conference with representatives from the APEC organizing committee and lawyers for the affected urban poor families. Also, there was no proof of less than humane eviction. There was no mention of how the eviction and demolition was undertaken, or how the evictors maltreated those evicted.

126. C.A.-G.R. SP No. 41592 (Mar. 2, 2000).

ix. "Beneficiary" Defense

In one case, *Villamia v. Heirs of Domingo Caballero,*[127] urban poor dwellers facing eviction raised the deficient defense that they were registered beneficiaries under the UDHA. The Court, through Mme. Justice Ibay-Somera, struck down this defense by stating that the eviction could not be stopped despite the UDHA beneficiary status of its subjects, because the land which they occupied was not identified as a socialized housing area. Also, their occupation of land by mere tolerance entitled the landowner to repossess it.

x. Ownership Defense

In *Cuevas v. Caunan,*[128] it was held that Section 28 will not be available as a defense to those who have consistently claimed ownership over the property. The law, Mme. Justice Ibay-Somera wrote, applies "only to squatters." That must have meant the doubtful underprivileged and homeless status of the defendants.

xi. UDHP Registration Defense

Section 28 is intertwined with the other provisions of the UDHA dealing with the Urban Development and Housing Program (UDHP) of local government units.[129] In *Lopez v. Bautista,*[130] urban poor defendants in a Valenzuela ejectment case brought the UDHP to the fore.

A case for forcible entry suit against defendants belonging to the Gen. T. De Leon Neighborhood Association was filed before the MTC of Valenzuela. As an urban poor association duly registered with the Securities and Exchange Commission (SEC), and accredited by the Presidential Commission for the Urban Poor (PCUP), they questioned the title of the plaintiff, and claimed entitlement to benefits under the UDHA. Section 28 was not specifically raised as a defense.

The MTC and RTC ruled against the urban poor defendants. On petition for review, the Court, speaking through Mme. Justice Adefuin-De La Cruz, enumerated the provisions on inventory of lands,[131] identification of sites for socialized housing,[132] eligibility criteria for socialized housing,[133] and

127. C.A.-G.R. SP No. 39389 (Apr. 30, 1997).

128. C.A.-G.R. SP No. 41372 (Aug. 29, 1997).

129. UDHA, § 2.

130. C.A.-G.R. SP No. 41937 (Sept. 30, 1997).

131. UDHA, § 7.

132. *Id.* § 8.

133. *Id.* § 16.

registration of socialized housing beneficiaries.[134] Mme. Justice Adefuin-De La Cruz asserted that the UDHA did not provide for "automatic coverage." Therefore, no one can assume that he is covered under the UDHA. The Court quoted with approval the *ratio decidendi* of the RTC judge that "only lawful and legitimate occupants can invoke the benefits of the said law."

Reference by urban poor defendants to the UDHP under the UDHA was a tacit reference to the adequate relocation requirement in Section 28. After all, a local government unit with an UDHP efficiently in place could facilitate the provision of adequate relocation in the event of eviction of its underprivileged and homeless citizens.

The insistence upon "non-automatic coverage" seemed to pertain to a standard for qualification different from proving underprivileged and homeless status in Section 28. It would seem that Mme. Justice Adefuin-De La Cruz would have been satisfied if registration of urban poor defendants as socialized housing beneficiaries by the Valenzuela local government was sufficiently proven. And it was not clear from this case if the requirement laid down in *Villamia v. Heirs of Domingo Caballero,* on identification of the subject premises as a socialized housing site, should coincide with registration of urban poor defendants as socialized housing beneficiaries.

In this regard, there was no evidence available before the Court which would have pointed to the fact that the Valenzuela local government had undertaken registration of UDHP beneficiaries. In 1994, President Ramos issued Presidential Proclamation No. 397, series of 1994, to remind local government units of this responsibility. If it turned out that the Valenzuela local government failed to register its UDHP beneficiaries at the time the MTC case was filed in May 1995, then the urban poor defendants were, in effect, faulted for governmental nonfeasance.

Incidentally, this case was also an opportunity to reiterate the *Galay* "rascal" pronouncement of the Supreme Court.

xii. Expropriation Defense

In *Paggadu v. Loja,*[135] the Court, through Mr. Justice Cui, affirmed a judgment for the plaintiff in an ejectment case against an urban poor community in Sampaloc, Manila. It downplayed efforts by the local government to expropriate the property, citing the provisions of the UDHA declaring expropriation as a last resort, and private property being the last priority in land acquisition for socialized housing purposes. It boldly declared that private property is not the principal focus in the urban land reform program. It was a

134. *Id.* § 17.

135. C.A.-G.R. SP No. 39442 (Jan. 23, 1998).

case similar to the Supreme Court pronouncement in *Filstream International,* a decision rendered about the same time.

xiii. P.D. 1818 and the Exempting Clauses

Gabor v. Olalia, Jr.[136] involved a demolition of shanties on the walls of Intramuros undertaken by the City Engineer of Manila and the Department of Tourism. In a petition for injunction filed by the owners of the shanties, an RTC judge issued a writ of preliminary injunction to enjoin demolition efforts, to preserve the status quo pending the determination of the issues raised in the main case. It was also apparent that the City of Manila was inclined to pursue the demolition, with or without relocation.

The Court, through Mr. Justice Montenegro, granted certiorari and annulled the order issuing the said writ. He invoked P.D. 1818, which proscribes the issuance of any restraining order, preliminary injunction or preliminary mandatory injunction in any case, dispute, or controversy involving an infrastructure project. The restoration of the Walls of Intramuros was considered to be a government infrastructure project critical to the upcoming centennial celebrations.

Mr. Justice Montenegro also invoked Section 28(a) and (b) in finding legal basis for the demolition, but made no mention of the rest of Section 28. He also considered the Intramuros site to be exempted from the UDHA under Section 5, which specifically excludes lands "actually and primarily used for cultural and historical sites" from coverage of the law.

But what was lost in the interpretation was the fact that UDHA coverage meant *Program* coverage,[137] which referred to the Urban Development and Housing Program created under Section 2. This was the comprehensive and continuing realization of the State Policies and Program Objectives laid down by the UDHA, i.e., upliftment of the conditions of the underprivileged and homeless; provide for rational use and development of urban land; adoption of workable policies to regulate and direct urban growth and expansion; providing an equitable land tenure system; encouraging more effective people's participation in the urban development process; and improvement of the capability of local government units in undertaking urban development and housing programs.[138] The exempting clause in Section 5 pertained to lands which could not be brought within the sphere of such policies and objectives.

Just and humane evictions, while complimentary to the UDHP, are distinct concepts. While the exempting clauses refer to suitability of land for socialized

136. C.A.-G.R. SP No. 44719 (May 15, 1998).

137. UDHA, § 4.

138. *Id.* § 2.