

# Playing with Powers and Rights: A Comment on *Social Justice Society, et al. v. Hon. Jose L. Atienza, Jr.*

Patricia Ann O. Escalona\*

I. INTRODUCTION .....	159
II. FACTS OF THE CASE .....	161
III. RESOLUTION OF THE SUPREME COURT .....	164
IV. ANALYSIS .....	168
A. <i>The Bill of Rights</i>	
B. <i>Police Power and Power of Eminent Domain</i>	
C. <i>Which Power Was Exercised?</i>	
V. CONCLUSION .....	180

## I. INTRODUCTION

*“The Framers of the Bill of Rights did not purport to “create” rights. Rather, they designed the Bill of Rights to prohibit our Government from infringing rights and liberties presumed to be preexisting.”*

- Justice William J. Brennan, Jr.

On 11 September 2001, a series of coordinated suicide attacks by Al-Qaeda against the United States took place. Almost 3,000 people died as a result of the attack, excluding the hijackers of the commercial passenger jetliners used to crash into the World Trade Center in New York City.<sup>1</sup> The attacks had major ramifications around the world, with the United States beginning the declaring a War on Terrorism.<sup>2</sup> Various countries around the world condemned the attacks and followed suit against this War, including the Philippines.

---

\* '10 J.D. cand., Ateneo de Manila University School of Law. Member, Board of Editors, *Ateneo Law Journal*.

*Cite as* 53 ATENEO L.J. 159 (2008).

1. September 11 Timeline, *available at* <http://www.9-11-2001.org/timeline.html> (last accessed July 19, 2008).
2. President Declares “Freedom at War with Fear,” *available at* <http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html> (last accessed July 19, 2008).

This unfortunate incident was the basis for then Manila Mayor Jose L. Atienza to proceed with the passage of Ordinance No. 8027.<sup>3</sup> Stating health, security, and public welfare as reasons, he and the legislative branch of the City of Manila, reclassified the location of the Pandacan Oil Terminals from an industrial to a commercial zone.<sup>4</sup> He stated that the terminals' presence was a threat to the safety of the citizens who lived around the area, as it continued to be a target for terrorist activities.

From this, two rights were at issue in the case at bar: the right to life and the right to property. These are guaranteed to citizens by the Constitution,<sup>5</sup> albeit with differing weights and values.

The right to property, as asserted by the three main oil companies operating in the Philippines, is one that has existed for almost a century. Their presence in Pandacan, Manila, began in the early 20th century. Their properties sit on the southern bank of the Pasig River near Malacañang Palace. Presently, the sprawling depot supplies about half of Luzon's fuel needs and about 82% of Metro Manila's gasoline and diesel requirements.<sup>6</sup> Pilipinas Shell Petroleum Corporation (Shell) put up its terminal in 1914, followed by Caltex (Philippines) Inc. (Caltex) (now Chevron Philippines Inc.) in 1917, and eventually, by Esso, Petron Corporation's (Petron) predecessor. At that time, the area was classified as an industrial zone, thereby allowing depot concessions to be granted to these companies. The entire area was destroyed by the Americans in World War II, but was reconstructed thereafter.<sup>7</sup> As time passed, commercial establishments, residences, schools, churches, and the like began to develop around the area. Today, it has become a densely-populated area inhabited by about 84,000 people, majority of whom belong to the urban poor.<sup>8</sup> These companies alleged that they stood to lose billions of pesos if forced to relocate.

---

3. Office of the City Mayor, Ordinance Reclassifying the Land Use of [Those] Portions of Land Bounded by the Pasig River In The North[,] PNR Railroad Track in the East, Beata St. in the South, Palumpong St. in the Southwest and Estero De Pandacan in the West, PNR Railroad in the Northwest Area, Estero of Pandacan in the Northeast, Pasig River in the Southeast and Dr. M. L. Carreon in the Southwest; the Area of Punta, Sta. Ana Bounded by the Pasig River, Marcelino Obrero St.[,] Mayo 28 St. and the F. Manalo Street from Industrial II to Commercial I, Manila City Ordinance No. 8027 (Nov. 20, 2001) [hereinafter Ordinance No. 8027].

4. *Id.* § 1.

5. PHIL. CONST. art. III, § 1.

6. Leila Salaverria & Allison Lopez, SC Orders Oil Firms to Leave Pandacan, *available at* [http://newsinfo.inquirer.net/inquirerheadlines/nation/view\\_article.php?article\\_id=53573](http://newsinfo.inquirer.net/inquirerheadlines/nation/view_article.php?article_id=53573) (last accessed July 19, 2008).

7. Social Justice Society v. Atienza Jr., 545 SCRA 92 (2008).

8. *Id.* at 107-08.

The right to life was the main argument of Manila's local government. That this right took precedence over the oil companies' right to property was the basis on which the Court resolved the issues presented to it. The Court found that the decision by the City of Manila to reclassify the area of Pandacan as a commercial zone was valid, as it catered to the safety and security of the citizens and was a lawful exercise of the city's police power.<sup>9</sup> The Court emphasized that as long as the terminals remained in Pandacan, they continue to pose a threat to the life of those residing within the area and resolved that there no longer existed any legal impediment to the city officials' to enforcement of the city's laws.

This Comment shows that while the right to life is unarguably supreme against the right to property, there must be an attempt to close the gap between these rights by means of a specific measure in the interest of fairness and justice.

## II. FACTS OF THE CASE

On 20 November 2001, the Sangguniang Panlungsod of the City of Manila enacted Ordinance No. 8027, which became effective on 28 December 2001 after publication.<sup>10</sup> This ordinance reclassified the area of Pandacan from industrial to commercial<sup>11</sup> and directed the owners and operators of businesses disallowed under said reclassification to cease and desist from the

---

9. *Id.*

10. *Social Justice Society v. Atienza, Jr.*, 517 SCRA 657 (2007).

11. *Id.* at 659. Ordinance No. 8027, § 1 & 2. The Ordinance states:

Sec. 1. For the purpose of promoting sound urban planning and ensuring health, public safety, and general welfare of the residents of Pandacan and Sta. Ana as well as its adjoining areas, the land use of [those] portions of land bounded by the Pasig River in the north, PNR Railroad Track in the east, Beata St. in the south, Palumpong St. in the southwest, and Estero de Pandacan in the west[,] PNR Railroad in the northwest area, Estero de Pandacan in the [n]ortheast, Pasig River in the southeast and Dr. M.L. Carreon in the southwest. The area of Punta, Sta. Ana bounded by the Pasig River, Marcelino Obrero St., Mayo 28 St., and F. Manalo Street, are hereby reclassified from Industrial II to Commercial I.

...

Sec. 3. Owners or operators of industries and other businesses, the operation of which are no longer permitted under Section 1 hereof, are hereby given a period of six (6) months from the date of effectivity of this Ordinance within which to cease and desist from the operation of businesses which are hereby in consequence, disallowed.

operation of their businesses within six months from the date of effectivity of the ordinance.<sup>12</sup> The oil companies of Shell, Caltex, and were affected.

A few months after, the said oil companies affected by the reclassification entered into a Memorandum of Understanding (MOU) with the Department of Energy and the City of Manila, which stated that the “scaling down of the Pandacan Terminal [was] the most viable and practicable option.”<sup>13</sup> The Sangguniang Panlungsod ratified the said memorandum but declared that the same was effective only for a period of six months beginning 25 July 2002. Thereafter, the Sanggunian adopted Resolution No. 13 extending the effectivity of the resolution to 30 April 2003 and authorized the Mayor of Manila to issue special business permits to the oil companies.<sup>14</sup>

In a 7 March 2007 decision, the Court ruled that respondent Mayor had the ministerial duty under the Local Government Code (LGC)<sup>15</sup> to “enforce all laws and ordinances relative to the governance of the city,” including Ordinance No. 8027.<sup>16</sup> The subsequent resolutions passed by the Sanggunian to ratify the MOU and to bind the City of Manila were only effective until 30 April 2003.<sup>17</sup> Therefore, it was concluded that there was nothing that legally hindered the respondent Mayor from enforcing the said ordinance.

After the decision was rendered, the oil companies and the Department of Energy sought to intervene and filed their respective motions for reconsideration and intervention.<sup>18</sup> Oral arguments were conducted on 11 April 2007 to hear the parties.<sup>19</sup> The oil companies called the Court’s attention to the fact that on 25 April 2003, Chevron had filed a complaint against the respondent Mayor and the City of Manila for the annulment of the ordinance with application for writs of preliminary prohibitory injunction and preliminary mandatory injunction.<sup>20</sup> On the same day, Shell

---

12. *Id.* at 660.

13. *Id.* at 661.

14. Sangguniang Panlungsod ng Maynila, Resolution Extending the Validity of Resolution 97, Series of 2002, to April 30, 2003, Thereby Authorizing His Honor Mayor Jose L. Atienza, Jr., to Issue Special Business Permits to Caltex Philippines, Inc., Petron Corporation and Pilipinas Shell Petroleum Corporation Situated within the Pandacan Oil Terminal Covering the Said Period, Resolution No. 13 (2002).

15. An Act Providing for a Local Government Code of 1991 [LOCAL GOVERNMENT CODE OF 1991], Republic Act No. 7160 (1991).

16. *Social Justice Society v. Atienza, Jr.*, 517 SCRA 657, 666 (2007).

17. *Id.*

18. *Social Justice Society v. Atienza Jr.*, 545 SCRA 92, 103 (2008).

19. *Id.*

20. *Id.*

filed a petition for prohibition and *mandamus* assailing the validity of the ordinance with application for writs of preliminary prohibitory injunction and preliminary mandatory injunction.<sup>21</sup> These applications were consolidated and granted via an order issued on 19 May 2003.<sup>22</sup> Petron followed suit when it filed a petition attacking the validity of the ordinance with a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order (TRO).<sup>23</sup> In an order dated 4 August 2004, the Regional Trial Court (RTC) enjoined the parties to maintain the status quo.<sup>24</sup>

Two years thereafter, the City Council of Manila enacted Ordinance No. 8119<sup>25</sup> which was approved on 16 June 2006. Chevron and Shell, affected by the recently issued ordinance, filed a complaint asking for the nullification of the ordinance.<sup>26</sup> Petron filed its own complaint on the same cause of action and the court issued a TRO enjoining the City of Manila from enforcing the said ordinance.<sup>27</sup>

Petitioner, the Social Justice Society (SJS), describes itself is a political party registered with the Commission on Elections. It raised the issue of the ordinance's implementation in the Supreme Court. It filed an original petition for *mandamus* under Rule 65 of the Rules of Court.<sup>28</sup> The petition sought to compel respondent Atienza, then Mayor of the City of Manila, to enforce said Ordinance No. 8027. It also asked the court whether the MOU with the oil companies and the subsequent resolutions that ratified it could repeal Ordinance No. 8027.<sup>29</sup>

---

21. *Id.*

22. *Id.* The Court's order read:

WHEREFORE, upon the filing of a total bond of TWO MILLION (Php 2,000,000.00) PESOS, let a Writ of Preliminary Prohibitory Injunction be issued ordering [respondent] and the City of Manila, their officers, agents, representatives, successors, and any other persons assisting or acting in their behalf, during the pendency of the case, to REFRAIN from taking steps to enforce Ordinance No. 8027, and let a Writ of Preliminary Mandatory Injunction be issued ordering [respondent] to issue [Chevron and Shell] the necessary Business Permits to operate at the Pandacan Terminal.

23. *Id.* at 104.

24. *Social Justice Society v. Atienza, Jr.*, 545 SCRA 92, 103 (2008).

25. City Council of Manila, Manila Comprehensive Land Use Plan and Zoning Ordinance of 2006, Ordinance No. 8119 (2006).

26. *Social Justice Society*, 545 SCRA at 104.

27. *Id.*

28. 1997 RULES OF CIVIL PROCEDURE, rule 65.

29. *Social Justice Society*, 545 SCRA at 100.

During the oral arguments conducted, the parties submitted to the Court's power to rule on the constitutionality and validity of Ordinance No. 8027. The Resolution of the Court is stated in the succeeding paragraph.

### III. RESOLUTION OF THE SUPREME COURT

The Court dealt with various issues such as, but not limited to, the intervention of the oil companies and the Department of Energy in the interest of justice, the effectivity of the injunctive writs issued to prevent the enforcement of Ordinance No. 8027, whether or not Ordinance No. 8119 superseded Ordinance No. 8027, the alleged implied repeal of Ordinance No. 8027 by Ordinance No. 8119,<sup>30</sup> the supposed inconsistency of Ordinance No. 8027 with Republic Act No. 7638<sup>31</sup> and Republic Act No. 8479<sup>32</sup> and whether the Ordinance was invalid for failure to comply with Republic Act No. 7924<sup>33</sup> and Executive Order No. 72.<sup>34</sup>

This Comment, however, focuses mainly on the issues raised by the petitioners in the Resolution promulgated on 13 February 2008, as regards the constitutionality and validity of Ordinance No. 8027, as well as the rights of the parties involved as directly affected by the Court's findings.

In pronouncing Ordinance No. 8027 as constitutional and legal as it falls squarely within the test of a valid ordinance, the Court stated that for an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and be passed according to the procedure prescribed by law, but it must also follow substantive requirements.<sup>35</sup>

---

30. *Social Justice Society v. Atienza Jr.*, 545 SCRA 92, 109 (2008).

31. *An Act Creating the Department of Energy, Rationalizing the Organization and Functions of Government Agencies Related to Energy, and for Other Purposes*, Republic Act No. 7638 (1992).

32. *An Act Deregulating the Downstream Oil Industry, and for Other Purposes*, Republic Act No. 8479 (1998).

33. *An Act Creating the Metro Manila Development Authority Defining its Powers and Functions, Providing Funds therefore and for Other Purposes*, Republic Act No. 7924 (1995).

34. *Office of the President, Providing for the Preparation and Implementation of the Comprehensive Land Use Plans of Local Government Units Pursuant to the Local Government Code of 1991 and Other Pertinent Laws*, Executive Order No. 72 (Mar. 25, 1993).

35. *See Tatel v. Municipality of Virac*, 207 SCRA 157, 161 (1992); *Solicitor General v. Metropolitan Manila Authority*, 204 SCRA 837, 845 (1991); *Magtajas v. Pryce Properties Corp., Inc.*, 234 SCRA 255, 268-67 (1994). The test for a valid ordinance is well-established by jurisprudence and the following are its substantive requirements:

The Court further added that it was within with police power of the City of Manila to pass such an ordinance.<sup>36</sup> Police power is defined as the plenary power vested in the Legislature to make statutes and ordinances to promote the health, morals, peace, education, good order, or safety of the general welfare of the people.<sup>37</sup> Under the LGC,<sup>38</sup> this police power is delegated to the local governments and may be exercised through their respective legislative bodies, such as the Sangguniang Panlungsod or the City Council. In effect, the Sanggunian was found to have the power to “reclassify land within the jurisdiction of the city.”<sup>39</sup>

The Court found that the City of Manila was impelled to take measures for the protection of its residents in case of terrorist attacks on the Pandacan Terminals.<sup>40</sup> According to the respondent Mayor:

Such a public need became apparent after the 9/11 incident which showed that what was perceived to be impossible to happen, to the most powerful country in the world at that, is actually possible. The destruction of property and the loss of thousands of lives on that fateful day became the

- 
- (1) The ordinance must not contravene the Constitution or any statute;
  - (2) it must not be unfair or oppressive;
  - (3) it must not be partial or discriminatory;
  - (4) it must not prohibit but may regulate trade;
  - (5) it must be general and consistent with public policy, and;
  - (6) it must not be unreasonable.

36. *Social Justice Society v. Atienza Jr.*, 545 SCRA 92, 136-41 (2008).

37. *Id.* at 116 (citing *Metropolitan Manila Development Authority v. Viron Transportation Co. Inc.*, 530 SCRA 341 (2007)).

38. LOCAL GOVERNMENT CODE OF 1991, § 16.

Sec. 16. General Welfare. — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

39. *Social Justice Society*, 545 SCRA at 137 (citing LOCAL GOVERNMENT CODE, § 458 (a) (2) (viii)).

40. *Id.* at 138.

impetus for a public need. In the aftermath of the 9/11 tragedy, the threats of terrorism continued [such] that it became imperative for governments to take measures to combat their effects.<sup>41</sup>

Therefore, with this purpose in mind and with the Sanggunian clearly in the best position to determine the needs of its constituents, the city reclassified the area from an industrial zone to a commercial zone via the Ordinance.<sup>42</sup> A zoning ordinance is defined as a local city or municipal legislation which logically arranges, prescribes, defines and apportions a given political subdivision into specific land uses in accordance with, present and future projection of needs.<sup>43</sup>

The Court further stated that in the exercise of the government's police powers, property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of government.<sup>44</sup> Nevertheless, this interference must be reasonable and not arbitrary.<sup>45</sup>

The oil companies argued that the ordinance was unfair and oppressive since it not only regulated but also absolutely prohibited them from conducting operations in the City of Manila. Furthermore, they had invested billions of pesos in the depot. If forced to close, they were to incur huge losses in income and expenses to construct new facilities to transfer the amount of oil in the terminals.<sup>46</sup> The Court found these arguments unmeritorious, again based on the exercise of police power.<sup>47</sup> It also added:

Compensation is necessary only when the state's power of eminent domain is exercised. In eminent domain, property is appropriated and applied to some public purpose. Property condemned under the exercise of police power, on the other hand, is noxious or intended for a noxious or forbidden purpose, and consequently, is not compensable.<sup>48</sup>

The Court clarified that the oil companies may still use the properties where the terminals are situated, as these remained theirs. What is restricted, however, is their use of the properties, which did not fall under commercial

---

41. *Id.* at 139.

42. *Social Justice Society v. Atienza Jr.*, 545 SCRA 92, 139 (2008).

43. *Id.* at 140.

44. *Id.* at 139 (citing *Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Gozun*, 485 SCRA 586, 604 (2006)).

45. *Id.* at 140.

46. *Id.* at 111.

47. *Id.* at 142.

48. *Social Justice Society v. Atienza Jr.*, 545 SCRA 92, 143 (2008) (citing *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 175 SCRA 343, 370 (1989)).



purposes as expressly delineated in the ordinance.<sup>49</sup> As respondent Mayor stated:

The oil companies are not forbidden to do business in the City of Manila. They may still very well do so, except that their oil storage facilities are no longer allowed in the Pandacan area. Certainly, there are other places in the City of Manila where they can conduct this specific kind of business. Ordinance No. 8027 did not render the oil companies illegal. The assailed ordinance affects the oil companies business only in so far as the Pandacan area is concerned.<sup>50</sup>

The oil companies also argued that the ordinance discriminated against and singled out the Pandacan Terminals despite the fact that the area was congested and did not comply with the National Building Code, Fire Code, and the Health and Sanitation Code.<sup>51</sup> The Court explained, however, that there existed a reasonable classification in the case at bar since what the ordinance seeks to prevent was “a catastrophic devastation that [would] result from a terrorist attack.”<sup>52</sup> Therefore, the classification was germane to the purpose of the ordinance. It fulfilled all the requirements of a valid ordinance in that it is not limited to the conditions existing when it was enacted but to future conditions as well. Finally, the ordinance was applicable to all businesses and industries in the area it delineated.<sup>53</sup>

A final word by the Court distinguished between the two constitutionally-guaranteed rights in issue: the rights to life and to property. It reiterated that the former enjoys precedence over the latter since life is irreplaceable, and property is not.<sup>54</sup> The residents and leaders of the City of Manila have the “right to preserve their lives and to safety which should not be curtailed by the intervenors’ warnings of doomsday scenarios and threats of economic disaster if the ordinance is enforced.”<sup>55</sup>

With this, the Court resolved to deny the motions for reconsideration filed by the oil companies.<sup>56</sup>

---

49. *Id.* at 141.

50. *Id.* at 142.

51. *Id.* at 144.

52. *Id.* at 145.

53. *Id.*

54. *Social Justice Society v. Atienza Jr.*, 545 SCRA 92, 157 (2008).

55. *Id.*

56. *Id.* at 160-61.

## IV. ANALYSIS

A. *The Bill of Rights*

The significance of the Bill of Rights<sup>57</sup> is that it remains a “guarantee that there are certain areas of a person’s life, liberty and property which governmental power may not touch.”<sup>58</sup> Government is vested with powers, which when unrestricted, becomes oppressive. These powers may be summarized into three: police power, power of eminent domain, and power of taxation.<sup>59</sup> These are considered inherent in government and may be defined, allocated, and delimited by the Constitution. The latter does not grant them.<sup>60</sup>

The right to life is not just the protection of the right to be alive or to the security of one’s limb against physical harm.<sup>61</sup> The right to life is the right to a good life.<sup>62</sup> On the other hand, the right to property includes all kinds of property found in the Civil Code.<sup>63</sup> Nevertheless, no right is absolute, and the proper regulation of a profession, calling, business or trade has always been upheld as a legitimate subject of a valid exercise of the police power by the State, particularly when their conduct affects either the execution of legitimate governmental functions or the preservation of the State, the public health and welfare, and public morals.<sup>64</sup>

Between these two rights, it is clear that the right to life ranks higher. It is above and beyond all the other protected rights granted to citizens by a State. As proof of this, life and property do not enjoy identical protection from the Constitution.<sup>65</sup> This principle is illustrated in the case of *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc.*<sup>66</sup> The petitioners Philippine Blooming Mills Employees Organization (PBMEO) was a legitimate labor union composed of the employees of the

---

57. PHIL. CONST. art. III, § 1.

58. JOAQUIN G. BERNAS, S.J., *THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER* 22 (2006 ed.) [hereinafter BERNAS].

59. *Id.*

60. *Id.*

61. *Id.* at 24.

62. *Id.*

63. *Id.* at 25.

64. *The Executive Secretary v. Court of Appeals*, 429 SCRA 81 (2004).

65. BERNAS, *supra* note 57, at 26.

66. *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc.* 51 SCRA 189, 202-03 (1973).

respondent Philippine Blooming Mills Co., Inc., and petitioners officers and members of the petitioner union.<sup>67</sup>

Petitioners decided to stage a mass demonstration in front of Malacañang on 4 March 1969, in protest against alleged abuses of the Pasig police, to be participated in by the workers of the first shift (from six o'clock in the morning to two o'clock in the afternoon) as well as those in the regular second and third shifts (from seven o'clock in the morning to four o'clock in the afternoon and from eight o'clock in the morning to five o'clock in the afternoon, respectively). They informed the respondent company of their proposed demonstration.<sup>68</sup>

The petitioners and their members (numbering about 400), proceeded with the demonstration despite the pleas of the respondent company that the first shift workers not be required to participate in the demonstration<sup>69</sup> and that the workers in the second and third shifts should be utilized for the demonstration from six o'clock in the morning to two o'clock in the afternoon on 4 March 1969. The company charged the petitioners and other employees who composed the first shift with a "violation of Section 4(a)-6 in relation to Sections 13 and 14, as well as section 15, all of Republic Act No. 875, and of the Collective Bargaining Agreement providing for 'No Strike and No Lockout.'"<sup>70</sup>

In their answer, the petitioners claimed that they did not violate the Collective Bargaining Agreement because they gave the respondent Company prior notice of the mass demonstration; that the said mass demonstration was a valid exercise of their constitutional freedom of speech against the alleged abuses of some Pasig policemen; and that their mass demonstration was not a declaration of strike because it was not directed against the respondent firm.<sup>71</sup>

After considering the aforementioned stipulation of facts submitted by the parties, the lower court found the petitioner PBMEO guilty of bargaining in bad faith and the other petitioners being directly responsible for perpetrating the said unfair labor practice and were, as a consequence, considered to have lost their status as employees of the respondent company.<sup>72</sup> From this, the petitioners appealed.

---

67. *Id.* at 196.

68. *Id.*

69. *Id.* at 198.

70. *Id.*

71. *Id.*

72. *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc.*, 51 SCRA 189, 199 (1973).

Included in the decision of the Court are principles regarding citizens' rights. As verbosely stated in the case:

While the Bill of Rights also protects property rights, the primacy of human rights over property rights is recognized.<sup>73</sup> Because these freedoms are 'delicate and vulnerable, as well as supremely precious in our society' and the 'threat of sanctions may deter their exercise almost as potently as the actual application of sanctions,' they 'need breathing space to survive,' permitting government regulation only 'with narrow specificity.'<sup>74</sup>

Property and property rights can be lost thru prescription; but human rights are imprescriptible. If human rights are extinguished by the passage of time, then the Bill of Rights is a useless attempt to limit the power of government and ceases to be an efficacious shield against the tyranny of officials, of majorities, of the influential and powerful, and of oligarchs — political, economic or otherwise

...

The superiority of these freedoms over property rights is underscored by the fact that a mere reasonable or rational relation between the means employed by the law and its object or purpose that the law is neither arbitrary nor discriminatory nor oppressive would suffice to validate a law which restricts or impairs property rights. On the other hand, a constitutional or valid infringement of human rights requires a more stringent criterion, namely existence of a grave and immediate danger of a substantive evil which the State has the right to prevent.<sup>75</sup>

The Court overturned the decision of the lower court stating that both it and the private firm violated the "constitutional immunities of petitioners."<sup>76</sup> This case illustrates the primacy of human rights over property rights.

In addition, rarely has a law interfering merely with property rights been declared unconstitutional.<sup>77</sup> In *Velasco v. Villegas*,<sup>78</sup> an ordinance was issued prohibiting any operator of any barber shop to conduct the business of massaging customers or other persons in any room of said barber shop or in the building where the barber shop is located, as long as the operator of the barber shop and rooms where the massaging is conducted is the same person. The Court found that this was not a deprivation of property without due

---

73. *Id.* at 202 (citing *March v. Alabama*, 326 U.S. 501, 509 (1946); *Tucker v. Texas*, 326 U.S. 517, 519-20 (1946)).

74. *Id.* (citing *NACCP v. Button*, 371 U.S. 415, 433 (1963)).

75. *Id.* at 203 (citing *Edu v. Erica*, 35 SCRA 481, 489 (1970); *Ichong v. Hernandez*, 101 Phil. 1155, 1165-66, 1175 (1957)).

76. *Id.* at 211.

77. BERNAS, *supra* note 57, at 32.

78. *Velasco v. Villegas*, 120 SCRA 568 (1983).

process but a valid exercise of police power under the general welfare clause for the protection of morals.<sup>79</sup>

While as proven in the discussion above, while it is of no dispute that between the two rights, the right to life is supreme, is it not possible to close the gap or lessen the inequality when these two are compared? In the present scenario, where neither the oil companies nor the residents and the City of Manila are at fault, can both their constitutionally-protected rights be met? That is, without sacrificing one for the other?

#### *B. Police Power and Power of Eminent Domain*

As earlier stated, police power is one of the inherent powers of government. It is used for the protection, safety, and security of the State's citizens, as well as for the promotion of their health and welfare. It rests upon public necessity and upon the right of the State and of the public to self-protection.<sup>80</sup> For this reason, its scope expands and contracts with changing needs.<sup>81</sup> This was the basis for the Court's decision in upholding the validity and constitutionality of Ordinance No. 8027.

The other inherent power of government is that of eminent domain.<sup>82</sup> It is defined as the "ultimate right of sovereign power to appropriate, not only the public but [even] the private property of all citizens within the territorial sovereignty, to public purposes."<sup>83</sup> It is as broad as police power itself.<sup>84</sup> It can thus reach every form of property which the State might need for public use.<sup>85</sup> For the proper exercise of this power, the following elements must be present: (1) there is "taking" of private property; (2) the taking must be for public use; and (3) there must be just compensation.<sup>86</sup>

There is "taking" of property under the power of eminent domain when the owner is actually deprived or dispossessed of his property, when there is a practical destruction or a material impairment of the value of his property,

---

79. BERNAS, *supra* note 57, at 32.

80. *Id.*

81. *Churchill v. Rafferty*, 32 Phil. 580, 602-03 (1915).

82. PHIL. CONST. art. III, § 9.

83. BERNAS, *supra* note 57, at 101 (citing *Charles River Bridge v. Warren Bridge*, 11 Pet. 420, 641 (U.S. 1837)).

84. *Id.* at 102.

85. *Id.* (citing *Barlin v. Ramirez*, 7 Phil. 41, 56 (1906)).

86. *Id.*

when he is deprived of the ordinary use of his property, and when he is deprived of the jurisdiction, supervision, and control of his property.<sup>87</sup>

The concept of “public use” is explained by Joaquin Bernas, S.J. as such:

Time was when “public use” was understood to mean “use by the public.” This narrow meaning has since been rejected in favor of a broader concept which includes any use that is of utility, advantage or productivity for the benefit of the public, generally. It is equivalent to “public welfare” in police power.<sup>88</sup>

The last requirement is the payment of just compensation. It is described as the “just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation.”<sup>89</sup> It need not always be in money, but at least in some form that embodies certainty of value and of payment.<sup>90</sup>

It is also essential to note that not all the property interests in the bundle of rights which constitute ownership must be appropriated for it to be considered as compensable taking.<sup>91</sup> In *US v. Causby*,<sup>92</sup> the planes flying from a nearby military airport resulting in the wreck of the plaintiff’s chicken farm was considered compensable taking via the establishment of an easement over the property.<sup>93</sup> Bernas explains further: “When one or more of these property interests are appropriated and applied to some public purpose, there already is compensable taking even if the bare title to the property remains with the private owner.”<sup>94</sup>

A similar situation was illustrated in *National Power Corporation v. Gutierrez*<sup>95</sup> Here, the NPC contended that full ownership was retained by the private respondents and that they were not deprived of the use of their land. Because of this, they could still plant the same crops as long as they did not come into contact with the transmission wires placed by NPC.<sup>96</sup> In

---

87. *Municipality of Carlota v. National Water and Sewage Authority (NAWASA)*, 12 SCRA 164 (1964).

88. BERNAS, *supra* note 57, at 106.

89. *Id.* at 107 (citing *Province of Tayabas v. Perez*, 66 Phil. 467, 469 (1938); *Manila Railroad Co. v. Velasquez*, 32 Phil. 286, 313-14 (1915); *City of Manila v. Estrada*, 25 Phil. 208, 234 (1913)).

90. *Id.* at 111.

91. *Id.* at 105.

92. *US v. Causby*, 328 U.S. 256 (1946).

93. *Id.* at 258.

94. BERNAS, *supra* note 57, at 105.

95. *National Power Corporation v. Gutierrez*, 193 SCRA 1 (1991).

96. BERNAS, *supra* note 57, at 103.

effect, since there was no full transfer of ownership rights, NPC should not be made to pay the full market value.<sup>97</sup> The issue was whether the acquisition of a mere right of way is an exercise of the power of eminent domain as contemplated by the Constitution. The Court answered in the positive, stating that “[t]he right of way easement perpetually deprives defendants of their proprietary rights as manifested by the imposition by the plaintiff upon defendants that below said transmission lines no plant higher than three meters is allowed ....”<sup>98</sup>

In more recent jurisprudence, the Court in *National Power Corporation v. Tiangco*<sup>99</sup> said:

While the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property, no cogent reason appears why said power may not be availed of to impose only a burden upon the owner of the condemned property, without loss of title and possession. However, if the easement is intended to *perpetually* or *indefinitely* deprive the owner of his proprietary rights through the imposition of conditions that affect the ordinary use, free enjoyment and disposal of the property or through restrictions and limitations that are inconsistent with the exercise of the attributes of ownership, or when the introduction of structures or objects which, by their nature, create or increase the probability of injury, death upon or destruction of life and property found on the land is necessary, then the owner should be compensated for the monetary equivalent of the land ....<sup>100</sup>

Both these inherent powers of government affect the right to private property. Through, police power, however, the property is merely “regulated” and no transfer of ownership takes place.<sup>101</sup> Through eminent domain, property is “taken” and there is a transfer of ownership.<sup>102</sup> The difference is essential, as in the latter situation, just compensation is required when property is “taken.” No such requirement is present when property is merely “regulated.”<sup>103</sup>

### C. Which Power Was Exercised?

As earlier stated, when property is condemned but is done in the exercise of a State’s police power, no compensation is required for the property taken.

---

97. *Id.*

98. *National Power Corporation*, 193 SCRA at 7.

99. *National Power Corporation v. Tiangco*, 514 SCRA 674 (2007).

100. *Id.* at 686-87.

101. BERNAS, *supra* note 57, at 104.

102. *Id.*

103. *Id.*

In line with with the Court's view, it was but proper not to compensate the oil companies with the expenses resulting from the exercise of this power.

What is advocated in this Comment, however, is that what was exercised by the City of Manila was not strictly its police power, but a form of the exercise of the power of eminent domain. The explanation below substantiates this proposal.

When the power of eminent domain is exercised, expropriation of property is permitted. By definition, expropriation is the "governmental taking or modification of an individual's property rights, especially by eminent domain."<sup>104</sup> This requires payment of just compensation to the owners of the property condemned.

In the case at bar, the oil depots in Pandacan were not expropriated strictly in the sense of "government taking" where the government takes the physical property itself as well as the title and rights of the owners to it. Rather, there was some form of modification in the property rights of the three oil companies. It is crucial to note that while these businesses were not deprived of the ownership of the properties, they were, nevertheless, prevented from using said properties for the purpose they intended when they purchased the area almost a century ago.<sup>105</sup> They were prevented from using the same as an oil depot when it was built exactly for that function. This seems to be a form of deprivation of one's property, since one is banned from using such property in accordance with its intended use and could, in effect, constitute a kind of "taking" as this concept was earlier defined.<sup>106</sup>

The reclassification by the local officials was aimed for a public purpose — that of the safety and security of its residents against terrorist attacks which would be fulfilled by the transfer of the oil depots. As earlier explained, the concept of public purpose has a wider and broader meaning which include

---

104. BLACK'S LAW DICTIONARY 602 (Bryan A. Garner, et al., eds., 7th ed. 1999).

105. *See generally* Social Justice Society v. Atienza Jr., 545 SCRA 92 (2008).

106. *See* Republic v. Vda. de Castellvi, 58 SCRA 336, 350-52 (1974). The case enumerated the following circumstances constituting "taking" for the purposes of eminent domain:

- (1) The expropriator must enter upon the private property;
- (2) The entrance must not be for a momentary period, that is, the entrance must be permanent;
- (3) The entry must be under warrant or color of legal authority;
- (4) The property must be devoted to public use or otherwise informally appropriated or injuriously affected;
- (5) The utilization of the property must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.



those which are for the benefit of the public. It was also said to be equivalent to public welfare under the exercise of police power.<sup>107</sup> The present scenario fits squarely into these requisites.

The only requirement missing would be that of just compensation. This element is required only when property is expropriated, with an amount or sum equivalent to the property's market value.<sup>109</sup>

What remains distinct in the presented situation is that the oil companies were the parties who were first granted concessions and permits to make use of the area as an oil terminal. When Shell began in 1914, the same was classified as an industrial zone.<sup>110</sup> Clearly, these companies were not at fault nor should they be blamed in the resulting growth and expansion of population in the area. The local government of the City of Manila should not have permitted the increase of residences and commercial establishments surrounding an oil depot since this is an obvious hazard. It is but just that the businesses should, at the very least, be given some support by the local government in transferring to another location.

When the City of Manila decided to limit the use of the properties these businesses owned, did this not constitute an act of "taking," with the public purpose being the safety and security of its residents? Did this situation not justify the grant of some form of compensation? In the discussed *National Power Corporation* case, the Court found that the perpetual deprivation of proprietary rights constitutes the exercise of eminent domain.<sup>111</sup> While what was discussed there involved easements, the principle should remain the same.

Local case law, however, does not seem to agree. Various municipal decisions of the Court pose problems to the above proposition, as there appears to be a form of superiority granted to the exercise of police power when placed against certain legal principles. As illustrated in the succeeding cases, the Court upheld the exercise of police power vis-à-vis contractual obligations.

In *Ortigas & Co., Limited Partnership v. FEATI Bank and Trust Co.*,<sup>112</sup> plaintiff-appellant appealed from the decision of the Court of First Instance of Rizal which dismissed its case for lack merit. In this case, plaintiff was engaged in the real estate business, developing and selling lots to the public,

---

107. See *Juarez v. Court of Appeals*, 214 SCRA 475 (1992).

109. *BERNAS*, *supra* note 57, at 107.

110. *Social Justice Society*, 545 SCRA at 106.

111. *National Power Corporation (NPC) v. Misericordia Gutierrez, et al.*, 193 SCRA 1, 7 (1991).

112. *Ortigas & Co., Limited Partnership v. FEATI Bank and Trust Co.*, 94 SCRA 533 (1979).

particularly the Highway Hills Subdivision along Epifanio delos Santos Avenue (EDSA).<sup>113</sup> As vendor, it sold to vendees Augusto Padilla and Natividad Angeles two parcels of land. Said vendees transferred their rights and interests over said lots to one Emma Chavez. The agreements between the parties stipulated restrictions over the subject parcel of land, whereby “it shall be used by the Buyer exclusively for residential purposes, and [the Buyer] shall not be entitled to take or remove soil, stones or gravel from it or any other lots belonging to the Seller ....”<sup>114</sup>

These restrictions were later annotated in the transfer certificates of title in the Register of Deeds. Plaintiff-appellant claimed that the restrictions annotated were imposed as part of its general building scheme designed for the beautification and development of the Highway Hills Subdivision, which formed part of the plaintiff-appellant’s property.<sup>115</sup> Defendant-appellee, however, maintained that the area along the western part of EDSA, from Shaw Boulevard to Pasig River, had been declared as a commercial and industrial zone by the Municipal Council of Mandaluyong, Rizal.<sup>116</sup> It alleged that the plaintiff-appellant “completely sold and transferred to third parties all lots in said subdivision facing EDSA” and that the lots were only purchased by defendant-appellee more than two years after the area had been declared a commercial and industrial zone.<sup>117</sup> When the defendant-appellee commenced a building devoted for banking purposes, plaintiff-appellant demanded that the latter cease construction. The former refused to comply alleging that the building was being constructed in accordance with zoning regulations.<sup>118</sup>

The issue was whether or not the resolution of the Municipal Council of Mandaluyong declaring the area in question as part of the commercial and industrial zone prevailed over the building restrictions imposed by plaintiff-appellant on the subject lots.<sup>119</sup> The Court upheld the declaration by the Municipal Council as it was in the exercise of the City’s police power “to safeguard and promote the health, safety, peace, good order and general welfare of the people in the locality.”<sup>120</sup> It noted that the lots in question were not only in front of the highway, industrial and commercial complexes

---

113. *Id.* at 538.

114. *Id.*

115. *Id.* at 539.

116. *Id.*

117. *Id.*

118. *Ortigas & Co., Limited Partnership v. FEATI Bank and Trust Co.*, 94 SCRA 533, 540 (1979).

119. *Id.*

120. *Id.* at 546.

had flourished around the place.<sup>121</sup> It added that the scope of police power expands as civilization advances.<sup>122</sup> Citing *Calalang v. Williams*,<sup>123</sup> it stated:

As was said in the case of *Dobbins v. Los Angeles*, ‘the right to exercise the police power is a continuing one, and a business lawful today may in the future, because of changed situation, the growth of population or other causes, become a menace to the public health and welfare, and be required to yield to the public good.’<sup>125</sup>

In another case involving zoning and the exercise of police power, the Court again upheld the impairment of contractual stipulations, if necessary to reconcile with the legitimate exercise of this power. The facts in *Presley v. Bel-Air Village Association, Inc.*<sup>126</sup> began with a complaint for specific performance and damages against the Teofilo Almendras, and Rollo Alemandras who were substituted by petitioner. Enedina Presley allegedly violated the Deed Restrictions of Bel-Air Subdivision that the subject house and lot shall be used only for residential and not for commercial purposes.<sup>127</sup> The Almendras were homeowners and members of the village association and Presley, as lessee of the former’s property, was the owner and operator of a “Hot Pan de Sal Store” located in the same address.<sup>128</sup> They were asked to cease from operations since the restrictions specified that the lot must be used only for residential purposes. Under the existing deed restrictions, the entire subdivision, even Jupiter Road, was classified as a purely residential area, particularly that of Jupiter Road.<sup>129</sup>

The Court found the petitioner to have converted a residential home to a commercial establishment thereby causing the village association to file suit to enforce the deed restrictions. Still, it found no reason to reconsider the *Sangalang v. Intermediate Appellate Court*<sup>130</sup> doctrine where, in a similar case, the Court absolved Ayala Corporation from liability when it opened Jupiter Street to the general public because the Metro Manila Commission had reclassified the area into a “high density commercial zone.”<sup>131</sup> Similarly, in

---

121. *Id.*

122. *Id.*

123. *Calalang v. Williams*, 70 Phil. 726 (1940).

125. *Ortigas & Co., Limited Partnership v. FEATI Bank and Trust Co.*, 94 SCRA 533, 547 (1979).

126. *Enedina Presley v. Bel-Air Village Association, Inc.*, 201 SCRA 13 (1991).

127. *Id.* at 16.

128. *Id.*

129. *Id.*

130. *Sangalang, et al. v. Intermediate Appellate Court*, 176 SCRA 719 (1989).

131. *Presley*, 201 SCRA at 18 (citing *Sangalang, et al. v. Intermediate Appellate Court*, 176 SCRA 719 (1989)).

*Presley*, the petitioner failed to present any proof convincing arguments to its claims that the subject street is still classified as a residential zone.<sup>132</sup> It was once more illustrated that the contractual stipulations on the use of the land, even when validly annotated, can be impaired when necessary in the legitimate exercise of police power.<sup>133</sup>

These previous cases illustrate the magnitude of a State's police power. When the safety, security, and welfare of the public are at issue, Courts will not hesitate to uphold the exercise of this power of government, even when faced with other legal standards.

Still, what makes the present circumstance of the oil companies unique from the above discussed cases is that instead of an issue involving contractual obligations versus police power which were at issue, it involved the latter versus the power of eminent domain which is of present concern. While the exercise of police power clearly trumps the rule on non-impairment of contracts, is the same power superior vis-à-vis the power of eminent domain? To be more precise, where does police power end and eminent domain begin? Case laws are silent on the matter.

The Civil Code<sup>134</sup> does not seem to agree with the above stated proposal as well. Under the laws on ownership, when competent authority seizes property for health, safety, or security, there is no requirement of compensation to the owner unless the latter can show justifiable reasons for disallowing such act.<sup>135</sup>

The field of international law offers the concept of indirect or creeping expropriation. This examines the cases of indirect takings or interference with property rights of a foreign investor by a host State and is considered illegal when not merely ephemeral or temporary in nature.<sup>136</sup> Nevertheless, the focus of this concept is on the existence and severity of the loss or injury due to the foreign investor whose property was indirectly expropriated. The interference need not also benefit the host State which exercises

---

132. *Presley v. Bel-Air Village Association, Inc.*, 201 SCRA 13, 19 (1991).

133. *Id.*

134. An Act to Ordain and Institute The Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 (1950).

135. *Id.* art. 436. The law states that “[w]hen any property is condemned or seized by competent authority in the interest of health, safety or security, the owner thereof shall not be entitled to compensation, unless he can show that such condemnation or seizure is unjustified.”

136. Patrick Simon S. Perillo, *Transporting the Concept of Creeping Expropriation From De Lege Ferenda to De Lege Lata: Concretizing the Nebulous Under International Law* (2007) (unpublished J.D. thesis, Ateneo de Manila University School of Law) (on file with the Professional Schools Library, Ateneo de Manila University).

expropriation.<sup>137</sup> It may also be made for the benefit of third parties.<sup>138</sup> It is said, however, that the line between the concept of indirect expropriation and governmental regulatory measures not requiring compensation has not been yet clearly articulated and depends on the specific facts and circumstances of a case.<sup>139</sup>

These concepts, while similar to certain municipal decisions and case laws, differ in that the standards set by Philippine courts are applied mainly to outright taking of land and not to mere interference cases.<sup>140</sup> In Philippine case laws, the discussion of the concept of taking includes the use and enjoyment of property, but the context in which these terms were used was actually for an outright taking, and not for an indirect one.<sup>141</sup>

In the *Causby* case, the U.S. Supreme Court did not specify the case as that of an indirect expropriation but an easement.<sup>142</sup> However, the circumstances present in the case would show that there was interference in the enjoyment of the owners over their property.<sup>143</sup> Subsequent cases in the Philippines cited the *Causby* case in holding that a taking may exist even if there is no taking of title, so long as it involves the taking of any of the property interests that forms part of the bundle of property rights.<sup>144</sup> Still, it is suggested that even under the concept of indirect or creeping expropriation, a situation which specifically involves the imposition of zoning restrictions proportionate to public interest, is equivalent merely to a valid regulation and thus, not compensable.<sup>145</sup>

The end result and purpose of pushing for the act of the City of Manila to be one of the exercise of eminent domain is to provide the oil companies with some form of compensation for their predicament and thereby satisfy both propriety rights and the right to life. While the present scenario could fulfill the definition and fundamentals of what the exercise of eminent domain constitutes, local laws and jurisprudence remain silent on this specific issue. The suggestion is that, in the interest of general welfare and distributive justice, no hard and fast rules be established. An option involves the enactment of legislation which combines the use of the police power and

---

137. *Id.*

138. *Id.*

139. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, INTERNATIONAL INVESTMENT LAW: A CHANGING LANDSCAPE 20 (2005).

140. Perillo, *supra* note 135.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

the power of eminent domain in appropriate situations rather than making a choice of one or the other, mainly because protected rights are involved.

#### V. CONCLUSION

The above proposal endeavors to close the gap between the right to life and the right to property. While the former is unarguably more superior in the hierarchy, it is only but just to lessen the inequality when both are pitted against each other by providing for measures which permit this. In the present case, this measure came in the form of proposing that what was exercised was not the city's police power, but its power of eminent domain. If decided as such, a win-win situation could ensue — one where the oil companies are compensated and assisted in the transfer of their depots, and where the residents are safe and secure without the threat of terrorist attacks.

Another factor for the proposal is that this particular decision could become a dangerous judicial precedent. By deciding mainly on the basis of police power, the Court subtly granted more control to the local governments, who in turn, could use their legislative powers in enacting rezoning ordinances merely to their advantage and intimidate businessmen and investors, since no compensation is required and, therefore, no loss would be incurred on their part. It would not likewise be farfetched to suggest that malicious and capricious parties may use this decision as a means for extortion if their desires are neglected. Businesses and investments may be sacrificed through the exercise of this police power merely based on inexistent threats to the safety and welfare of constituents.

Sometimes, safety, security, and health come with a price. This, the government must shoulder.