JUDICIAL OVERREACHING IN SELECTED SUPREME COURT DECISIONS AFFECTING ECONOMIC POLICY*

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I. APPROPRIATIONS AS PARTICULAR NORMS FOR LEGISLATIVE ENACTMENT: *Guingona Jr. v. Carague*

In general jurisprudence, a clear distinction is made between General Norms and Particular Norms, or in more prosaic terminology, between General Law and Particular Laws. What distinguishes the two lies in the exactness, concreteness, certainty, definiteness or specificity of the particular. One is reminded, for elucidation, of the concept elaborated by Strawson, the eminent philosopher, in his book on "Individuals". In the legal domain, Particular Laws correspond to Individuals in their uniqueness. No Particular Norm is quite the same as any other Particular Norm.

The decisive failure of the high Court in the *Guingona v. Carague*[1] case was its failure to apprehend the true nature of an appropriation as a Particular Norm, that is, as a directive to disburse or pay a sum certain in money, and to distinguish the Law, which is the vehicle of the appropriation, from the appropriation itself. Such distinction is readily made apparent if we conceive of appropriations acts, including the General Appropriations Act, as a cluster of Particular Norms consisting of appropriations, each made up of specific sums of money.

This distinction is literally made out by the Constitution itself, which states:

> No money shall be paid out of the treasury except in pursuance of an appropriation made by law.[2]

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[1]196 SCRA 221 (1991).

[2]CONST., art. VI, sec. 29(1).

Note the clear precision in the delineation of an appropriation, which refers to a sum certain of money, and how such appropriation as Particular Norm is to come about, that it is to be "made by law."

Coming to the heart of the matter, it is submitted that only Congress is authorized by the Constitution to make appropriations by enacting an appropriations law. The phrase "made by law" occurring in a provision in the article on Legislative Power, refers to the laws enacted by Congress.

On this supposition that only Congress can make an appropriation in the form of a Particular Norm embodied in a legislative act, it becomes manifest that the appropriation power is non-delegable. For an appropriation, any appropriation, is a Particular Norm which is uniquely discrete, and by specific requirement of the Constitution, it must be brought into being or existence "by law" or a legislative enactment. This power is committed by the Constitution to Congress, which alone must exercise it. The appropriation power is Legislative Power and may not be transferred.

Congress is designated the people's delegate and no further delegation may be made.

In this light, the appropriations questioned in the case fall short of requirements. First, the appropriations as Particular Norms are not set by Congress, whose authority is exclusive, but by officials of the executive department, and second, such appropriations are not "made by law" but rather by administrative orders emanating from executive officials. Insofar as reliance is placed on the authorizing decrees, the acts are void, since the decrees are void.

The high court fell into error in Guingona,[3] because it missed the distinction between appropriations and appropriations laws delegable, without considering the clear language of the Constitution that each appropriation as Particular Norm is to be determined by the legislative and to be expressed in a law made by Legislative Power. Legislative Power is non-delegable, except when expressly authorized by the Constitution.

Note should be taken that the principal argument in *Guingona* focuses on the characteristics of an Appropriation Law, which is but the

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[3] *Id.*

vehicle for an appropriation or a cluster of appropriations taken as particular norms. The argument is completely silent on the nature and concept of an appropriation, which by its particularity is analogous to "Event" in modern physics, occurring in a definite continuum of space and time. Every appropriation is concrete and particular, because it has magnitude in terms of a *sum* certain in money, it is circumscribed as to the *time* in which disbursement or payment is to be made (in terms of a definite fiscal year) and as to the particular *purpose* to which it is devoted (in this case, a debt certain which is owing and payable for a specific fiscal year).

If every appropriation is an even, laden with such specificities and is only to be "made by law", how can the amounts set aside by administrative (Central Bank and Treasury) and executive (the President) officials through their issuances be deemed to conform to the Constitution?

In more conventional terms, an appropriation is a laying down of policy, because it reflects priorities in the allocation of public funds, which are scarce resources. Such delicate function is intended to remain with the legislature as its exclusive domain.

II. OVEREXTENDING THE CONCEPT OF JUST COMPENSATION

In *Association of Small Landowners v. Secretary of Agrarian Reform*[4], the Court enunciated a rule which merits scrutiny and criticism--perhaps even condemnation--because it may well have sounded the death-knell and the ultimate demise of the constitutionally mandated programs of Agrarian Reform and Urban Land Reform.

We are all familiar with the far-reaching ruling in the case of *Export Processing Zone Authority vs. Dulay*[5] In this case, the high Court made the following pronouncements:

> 1. The determination of Just Compensation in eminent domain cases is a Judicial Function, which function may not be prevented, thwarted or curtailed by he Legislative or Executive Branches.
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> 2. Presidential Decrees on the fixing of Just Compensation are unconstitutional and invalid, insofar as they prescribe formulas for fixing

[4]175 SCRA 343 (1989).
[5]149 SCRA 305 (1987).

> Just Compensation which oust the courts from the Judicial Function of determining Just Compensation to be paid in cases of Eminent Domain.[6]

In regard to all takings of private property in the exercise of Eminent Domain proper, the foregoing rulings are appropriate and may be regarded as constitutionally sound and correct. It is but just that when the State takes private property for public use, transferring such property from the private sphere to the public sector permanently, the private owner should be justly compensated in an amount corresponding to the true and fair market value of the property taken.

But such rulings must be confined to cases in the exercise of Eminent Domain proper, where title to the property taken is transferred to and vested in the State or its agencies and the property is truly devoted to public use, which embraces use by the general public as in the case of roads and markets, or use by the Government for public benefit, such as use for school purposes, for military reservations, for promotion of tourism, or for economic zones.

However, there are takings of private property in which public use in the sense of public benefit is achieved by allocating and giving the property in small lots or areas to deserving beneficiaries, such as tenants or lessees in the case of agrarian reform programs, or to occupants or low-income families in the case of urban land reform and urban housing programs.

These are situations of police power exercise, in which expropriation is availed of in aid and in implementation of welfare programs for the common people. These situations of incidental exercise of Eminent Domain are easily distinguished from situations of exercise of Eminent Domain proper. First, in the welfare programs of the State, the transfer of private property to the public sphere is always temporary, aimed solely at facilitating development and segregation of areas for transfer and turn-over to program beneficiaries who are usually landless and belong to the lower socio-economic strata of Philippine society. Second, it is the purpose and intention of these programs that upon completion of amortization payments on the property allocated to each beneficiary, title therein shall vest in such beneficiary. Hence, the property taken for welfare programs in the exercise of police power are ultimately destined for return and transfer to the private sphere. The opposite is true in cases of Eminent Domain proper, where title is vested in the Government or its

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[6] *Id.*, at 316.

agencies (including utility companies) and the property remains permanently in the public sphere.

In the case of *Association of Small Land Landowners*,[7] above cited, the high court appears to have applied its rulings in *EPZA*[8] to expropriations incidental to the welfare program on agrarian reform, without qualification. Then, in *Manotok vs. National Housing Authority*[9] the high court also applied the same rulings to expropriations incidental to the welfare program on urban housing and land reform, also without qualification.

The adverse and disruptive impact of these rulings upon the practical operation of the aforesaid welfare programs cannot be overestimated. In consequence, these programs are so undermined and disrupted, that they have ceased to be practical and viable.

The fact of the matter is that, given the inflation rate and the pitifully small incomes of farmer beneficiaries and low-income urban families, neither group can afford the farm lots and the housing lots or units that would have to be sold to them at cost. Under the *EPZA v. Dulay* and similar rulings, the price of the lands acquired by the Government for these welfare programs is reckoned at true and fair market value, hence, virtually blown sky-high.

The rulings of the high court on just compensation have brought about a crisis in the agrarian reform program. In a Department of Agrarian Reform (DAR) seminar held early last year in Cavite for their senior legal staff and operations officers, it was openly admitted that the land acquisition operations were virtually at a stand-still. The DAR is hamstrung by a cumbrous procedure. For each parcel of land to be acquired, just compensation[10] mandates:

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[7]*Supra*, note 4.

[8]*Supra*, note 5.

[9]150 SCRA 99 (1987).

[10]In the Association of Small Landowners case, the matter of Just Compensation was pronounced upon by the high court as follows:

> Objection is raised, however, to the manner of fixing the just compensation, which it is claimed is entrusted to the administrative authorities in violation of judicial prerogatives. Specific reference is made to Section 16(d), which provides that in case of the rejection or disregard by the owner of the offer of the government to buy his land-

... the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

To be sure, the determination of just compensation is a function addressed to the courts of justice and any not be usurped by any other branch or official of the government. EPZA v. Dulay resolved a challenge to several decrees promulgated by President Marcos providing that the just compensation for property under expropriation should be either *the assessment of the property by the government or the sworn valuation thereof by the owner, whichever was lower. In declaring these decrees unconstitutional, the Court held through Mr. Justice Hugo E. Gutierrez, Jr.:*

The method of ascertaining just compensation under the aforesaid decrees constitutes impermissible encroachment on judicial prerogatives. It tends to render this Court inutile in a matter which under this Constitution is reserved to it for final determination.

Thus, although in an expropriation proceeding the court technically would still have the power to determine the just compensation for the property, following the applicable decrees, its task would be relegated to simply stating the lower value of the property as declared either the owner or the assessor. As a necessary consequence, it would be useless for the court to appoint commissioners under Rule 67 of the Rules of Court. Moreover, the need to satisfy the due process clause in the taking of private property is seemingly fulfilled since it cannot be said that a judicial proceeding was not had before the actual taking. However,.the strict application of the decrees during the proceedings would be nothing short of a mere formality or charade as the court has only to choose between the valuation of the owner and that of the assessor, and its choice is always limited to the lower of the two. the court cannot exercise its discretion or independence in determining what is just or fair. Even a grade school pupil could substitute for the judge insofar as the determination of constitutional *just compensation is concerned.*

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In the present petition, we are once again confronted with the same question of whether the courts under P.D. No. 1533, which contains the same provision on just compensation as its predecessor decrees, still have the power and authority to determine just compensation, independent of what is stated by the decree and to this effect, to appoint commissioners for such purpose.

This time, we answer in the affirmative.

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1. Preliminary determinations by the DAR officials;

2. Review of preliminary determinations by the Land Bank;

3. Where the landowner does not agree to the amount thus determined, he has the right to file an appeal to the Regional Trail Court for determination of just compensation;

4. The award is appealable to the Court of Appeals, and the determination of the appellate court is reviewable by the Supreme Court.

In the *Manotok v. National Housing Authority* , the high court pronounced upon the matter of Just Compensation for lands taken for Urban Housing and Land Reform as follows:

> P.D.s 1669 and 1970 go further. *There is no mention of any market value declared by the owner.* Sections 6 of the two decrees peg just compensation at the market value determined by the City Assessor. The City Assessor is warned by the decrees to "consider existing conditions in the area notably, that no improvement that has been undertaken on the land and that the land is squatted upon by resident families which should considerably depress the expropriation costs."

. . .

> *It is violative of due process to deny the owner the opportunity to prove that the valuation in the tax documents is unfair or wrong. And it is repulsive to the basic concepts of justice and fairness to allow the haphazard work of a minor bureaucrat or clerk to absolutely prevail over the judgment of a court promulgated only after expert commissioners have actually viewed the property, after evidence and arguments pro and con have been presented, and after all factors and considerations essential to a fair and just determination have been judiciously evaluated.*

A reading of the aforecited Section 16(d) will readily show that it does not suffer from the arbitrariness that rendered the challenged decrees constitutionally objectionable. Although the proceedings are described as summary, the landowner and other interested parties re nevertheless allowed an opportunity to submit evidence on the rel value of the property. But more importantly, the determination of the just compensation by the DAR is not by any means final and conclusive upon the landowner or any other interested party, for Section 16(f) clearly provides:

> Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation. 175 SCRA 343, 380-38 (1989).

> In other cases involving expropriations under P.D. Nos. 76, 464, 7494, and 1533, this Court has decided to invalidate the mode of fixing just compensation under said decrees.[11] With more reason should the method in P.D.s. 1669 and 1670 be declared infirm.
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> The market value stated by the city assessor alone cannot substitute for the court's judgment in expropriation proceedings. It is violative of the due process and the eminent domain provisions of the Constitution to deny to a property owner the opportunity to prove that the valuation made by a local assessor is wrong or prejudiced. The statements made in tax documents by the assessor may serve as one of the factors to be considered but they cannot exclude or prevail over a court determination made after expert commissioners have examined the property and all pertinent circumstances are taken into account and after the parties have had the opportunity to fully plead their cases before a competent and unbiased tribunal. To enjoin this Court by decree from looking into alleged violations of the due process, equal protection, and eminent domain clauses of the Constitution is impermissible encroachment on its independence and prerogatives.
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> The maximum amounts, therefore, which were provided for in the questioned decrees cannot adequately reflect the value of the property and, in any case, should not be binding on the property owners for, as stated in the above cases, there are other factors to be taken into consideration. We, thus, find the questioned decrees to likewise transgress the petitioners' right to just compensation. Having violated the due process and just compensation guarantees, P.D. Nos. 1669 and 1670 are unconstitutional and void.[12]

III. RIGIDITY IN ADHERENCE TO CONCEPT OF AGRICULTURE AS CULTIVATION OF CROPS

Luz Farms v. Secretary of the Department of Agrarian Reform

A fair reading of the provisions of the Constitution on Agrarian Reform in its Article XIII discloses a broad and comprehensive scope, so as to embrace all agricultural lands devoted to gainful production. Reference to

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[11] *See Export* Processing Zone Authority v. Hon. Ceferino E. Dulay, et al. G.R. No 59603.

[12] 150 SCRA 99, 109 (1987).

"farmers" in Sec. 4 brings in all lands under cultivation for production of crops, without regard to form of tenure, whether under tenancy, under agricultural leasehold, civil law lease, owner cultivator regime. Reference to "regular farmworkers" again in Section 4 also brings in all agro-based enterprises using hired labor under regular employment, including lands under labor administration, such as haciendas, nurseries, truck gardens, etc., and even capital intensive ventures which are essentially based on land, including fishponds, aviaries, pig farms, and poultry farms. The decisive element is the use of agricultural land for the enterprise.

It is clearly the intent of the Constitution to foster not only direct ownership or proprietorship of the individual farmer, but also collective or social ownership especially through cooperatives. This is clear from the reference to "those who are landless, to own directly or collectively the lands they till, or in the case of other farm workers, to receive a just share of the fruits thereof."[13]

In the light of such comprehensive language of the Constitution, which brings all agro-based enterprises within its ambit and scope, the pronouncement by the high court delimiting and circumscribing the purview and ambit of Article XIII to "agriculture" in the sense of cultivation of crops appears unduly restrictive and even ultra-conservative and reactionary.

The broad language of the Constitution provides no justification at all for the high Court in basing its argument on the concept of "agriculture" and the commission proceedings purporting to limit the scope of Art. XIII to "agriculture".

To begin with, the Constitution in Art. XIII makes no reference to "agriculture" and uses the phrase "all agricultural lands".[14]

Second, even on the scope of "agriculture" our jurisprudence has recognized a latitudinarian and liberal interpretation.[15]

Third, on the matter of "agricultural lands" as used in the Philippine Constitution, our jurisprudence has likewise upheld a liberal and latitudinarian interpretation.[16]

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[13]CONST., art. XIII, sec. 4; *See also* Const., Art. XII, sec. 6.
[14]CONST., art. XIII, sec. 4.
[15]Molina v. Rafferty, 37 Phil. 545 (1918).
[16]Krivenko v. Register of Deeds, 79 Phil. 461.

Fourth, the high court ought to have borne in mind that utmost leeway and latitude must be accorded in ascertaining the Constitution's meaning and underlying intent, in accord with the canons of construction laid down in *McCulloch v. Maryland*.[17]

Fifth, the high court ought to have kept in mind the true nature of our republican polity, which has moved away from the "Laissez Faire" concept of society and has ardently embraced the welfare state philosophy espousing governmental activism in the quest for social justice and the great good of the greatest number.

In *Luz Farms v. Secretary of the Department of Agrarian Reform*[18] where the issue was whether or not livestock and poultry farms were included in the coverage of the agrarian reform program, the high Court held section 13 and 32 of the Comprehensive Agrarian Reform Law unconstitutional on the basis of its reasoning that in construing constitutional provisions of doubtful meaning the courts may consider the debates of the Constitutional Convention inorder to throw light in the intent of the framers of the Constitution. Going into the transcripts of the 1986 Constitutional Commission the Court found that it was never the intention of the members of the Commission "to include the livestock and poultry industry in the coverage of the constitutionally mandated agrarian reform program of the government." In so doing, the Court concluded that:

> It is evident from the foregoing discussion that Section II of R.A. 6657 which includes "private agricultural lands devoted to commercial livestock, poultry and swine raising" in the definition of "commercial farms" is invalid, to the extent that the aforecited agro-industrial activities are made to be covered by the agrarian reform program of the State. There is simply no reason to include livestock and poultry lands in the coverage of agrarian reform.[19]

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[17] 4 L.ed 579.
[18] 192 SCRA 51.
[19] *Id.*

IV. OVER-REACHING TO SAFEGUARD A TENUOUS RIGHT: *Garcia v. Board of Investments*

At stake in *Garcia v. Board of Investments*[20] was the fate of a Petrochemical Project, billed as a beachhead in our national industrialization program. The Philippines is a heavy importer, chiefly from the United States, of plastic materials for use in domestic industries. Once operational, however, the Petrochemical Project would radically alter the situation by converting the country from being an importer to an exporter of plastics. At the same time, plastic would be readily available at cheaper prices for domestic industries. All in all, the Project would be a much needed boon to our industrial expansion. Financing was to come from Taiwanese investors, and the project was ready to go when it hit a snag: a proposed transfer of the Project site from Bataan to Batangas was adjudged invalid by the Supreme Court in the above cited case.

The Court anchored its pronouncement of invalidity on the constitutional requirement of procedural due process, particularly the requirement of notice of hearing. The Court adjudged the order of the Board of Investments (BOI) granting the transfer, as invalid on two due process grounds: first was lack of notice, due to the BOI failure to make publication of the amended application and to provide copies of documents to the oppositors; and second, due to the failure of the BOI to afford the oppositors their right to a hearing before granting the application.

The dissenting opinion of Madame Justice Ameurfina Melencio-Herrera provides such telling and effective answers to the arguments of the high court, that this author will make extensive use of such dissent through appropriate quotations.

On the ground of denial of Notice due to lack of "publication of the application" and non-furnishing of pertinent documents to the oppositors, the high court observed as follows:

> This Court is not concerned with the economic, social and political aspects of this case for it does not possess the necessary technology and scientific expertise to determine whether the transfer of the proposed BPC petrochemical complex from Bataan to Batangas and the change of fuel from naptha only to naptha and/or LPG" will be best for the project and for our

[20]177 SCRA 374 (1989).

> country. This Court is not about to delve into the economics and politics of this case. It is concerned simply, with the alleged violation of due process and the alleged extra limitation of power and discretion on the part of the public respondents in approving the transfer of the project to Batangas without giving due notice and an opportunity to be heard to the vocal opponents of that move.

The Omnibus Investments Code of 1987[21] expressly declares it to be the policy of the State "to accelerate the sound development of the national economy... by encouraging private Filipino and foreign investments in industry, agriculture, forestry, mining, tourism, and other sectors of the economy." For this purpose, the Code mandates the holding of "consultations with affected communities whenever necessary".[22] Correspondingly, Article 33 provides that: "Whenever necessary, the Board, through the People's Economic Council, shall consult the communities affected on the acceptability of locating the registered enterprise within their community."

The Code also requires "the *publication* of applications for registration," hence, the payment of publication and other necessary fees... prior to the processing and approval of such applications".[23]

As provided by the law, the BPC's application for registration as a "new export producer of ethylene, polyethylene and polyproplylene" was published in the "Philippine Daily Inquirer" issue of December 21, 1987. The notice invited "any person with valid objections to or pertinent comments on the above-mentioned application... (to file) his/her comments/objections in writing with the BOI within one (1) week from the date of this publication"

Since the BPC's amended application (particularly the change of location from Bataan to Batangas) was in effect a new application, it should have been published so that whoever may have any objection to the transfer may be heard. The BOI's failure to publish such notice and to hold a hearing on the amended application deprived the oppositors, like the petitioner, of due process and amounted to a grave abuse of discretion on the part of BOI.

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[21]EXEC. ORDER No. 226, July 16, 1987.
[22]INVESTMENTS CODE, art. 2, subpar. 2.
[23]INVESTMENTS CODE, art. 7, subpar. 3.

There is no merit in the public respondent's contention that the petitioner has "no legal interest" in the matter of the transfer of the BPC petrochemical plant from the province of Bataan to the province of Batangas. The provision in the Investments Code requiring publication of the investor's application for registration in the BOI is implicit recognition that the proposed investment or new industry is a matter of public concern on which the public has a right to be heard. And, when the BOI approved BPC's application to establish its petrochemical plant in Limay, Bataan, the inhabitants of that province, particularly the affected community in Limay, and the petitioner herein as the duly elected representative of the Second District of Bataan acquired an interest in the project which they have a right to protect. Their interest in the establishment of the petrochemical plant in their midst is actual, real, and vital because it will affect not only their economic life but even the air they will breathe.

On the matter of notice, the dissenting opinion observes first, that publication is not required of the application; second, that the requirement actually relates to notice of the action of the BOI; and third, there was publication of the action taken by the BOI, hence, there was full compliance with statutory requirement.

With all due respect, I find no grave abuse of discretion on the part of BOI, nor denial by it to petitioner of due process.

As regards publication, Article 54 of the Omnibus Investments Code provides:

> Art. 54. *Publication and Posting of Notices.* - Immediately after the application has been given due course by the Board, the Secretary of the Board or any official designated by the Board shall require the applicant to publish the *notice of action of the Board* thereon at his expense once in a newspaper of general circulation in the province or city where the applicant has its principal office, and post copies of said notice in conspicuous places, in the office of the Board or in the building where said office is located, setting forth in such copies the name of the applicant, the business in which it is engaged on proposes to engage or invest, and such other data and information as may be required by the Board. No approval or certificate shall be valid without the publication and posting of notices as herein provided". (Emphasis supplied.)

Clearly, it is not the application itself that is required to be published but notice of the action of the Board plus the specified data.

Thus, the Notice of Publication, which appeared in the Inquirer, simply read:

> Notice is hereby given that the application of BATAAN PETROCHEMICAL CORPORATION ... for registration with the Board of Investments under Book I of the Omnibus Investments Code of 1987, otherwise known as Executive Order No. 226 as new export producer of ethylene, polyethylene and polypropylene has been officially accepted on December 17, 1987 and is currently being processed.
>
> Any person with valid objections to or pertinent comments on the above-mentioned application may file his/her comments/objections in writing with the BOI within one (1) week from the date of this publication.
>
> Let this notice be published at the expense of the applicant.

Absent the requirement of publication of the application itself, there should be no need either to publish the amendments to the application. The statement in the majority opinion that the amended application is considered a new application does not find support in the Omnibus Investments Code. After all, the amendment did not change the essence or nature of the petrochemical project but only the site and the feedstock.

On the matter of the denial of the right to a hearing, the high Court observed:

> Hence, they have a right to be heard or "be consulted" on the proposals to transfer it to another site for the Investments Code does require that the "affected communities" should be consulted. While this Court may not require BOI to decide that controversy in a particular way, we may require the Board to comply with the law and its own rules and regulations prescribing such notice and hearing.

This Court in the cases of *Tañada v. Tuvera,*[24] and *Legaspi v. Civil Service Commission*[25] has recognized a citizen's interest and personality to procure the enforcement of a public duty and to bring an action to compel the performance of that duty. In this case, what the petitioner seeks is for the Board of Investments to hold a hearing where he may present evidence in support of his opposition to the BPC's amended application for registration

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[24]36 SCRA 27.
[25]150 SCRA 530 (1987).

(which amounts to a new application) since one of the effects of the amendment is to change the site of its petrochemical plant from Bataan to Batangas.

The dissenting opinion, however, cited the statutory provision as negating such right.

The Omnibus Investments Code, does not require the BOI to hold hearings before approving applications for registration or amendments thereto. In fact, hearings would contravene Codal provisions on confidentiality. Article 7, paragraph 4, cited in the majority opinion neither supports the necessity of hearings. It reads:

> Art. 7. Powers and Duties of the Board.
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> (4) After due hearing, decide controversies concerning the implementation of this Code that may arise between registered enterprises or investors therein and government agencies, within thirty (30) days after the controversy has been submitted for decisions

In other words, due hearing is required only in connection with controversies between registered enterprises or investors therein and government agencies concerning the implementation of the Omnibus Investments Code. It does not speak at all of a hearing on applications for registration or amendments thereto.

Additionally, Article 34 of the Omnibus Investments Code, in providing that applications not acted upon by the Board within twenty (20) days from official acceptance thereof shall be considered automatically approved implies that a hearing is not at all indispensable in the matter of registration of enterprises. The intention of the law to make BOI proceedings non-adversarial and as expeditious as possible consistent with the Codal policy to encourage investments, is clearly discernible.

Besides, a hearing as ordained, will serve no practical purpose for petitioner has already fully presented his case, the BOI has given it due consideration and has acted accordingly.

V. CONCLUSION

Given the constraints, this writer has focused on a number of selected Supreme Court decisions of recent vintage which were analyzed in terms of a unifying thread of thought. But this thread consisted of underlying concepts of law or jurisprudence which are misused, abused or misapplied in each of the decisions considered. The principal concern of this article was to illustrate the hazards of judicial over-reaching due to conceptual misperceptions and misapplications.