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evidence of guilt nor *prima facie* case has been presented by the petitioner.[22] No reversible error may be attributed to the court *a quo* when it dismissed petitioner's special civil action for *mandamus*.

WHEREFORE, the instant petition is *DISMISSED* for lack of merit. Costs against petitioner.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and *De Leon, Jr., JJ.*, concur.

FIRST DIVISION

[G.R. No. 137152. January 29, 2001]

CITY OF MANDALUYONG, *petitioner, vs.* **ANTONIO N., FRANCISCO N., THELMA N., EUSEBIO N., RODOLFO N., all surnamed AGUILAR,** *respondents.*

SYNOPSIS

Respondents Antonio, Francisco, Thelma, Eusebio and Rodolfo, all surnamed Aguilar, were the registered owners of three adjoining parcels of land with an aggregate area of 1,847 square meters located at 9 de Febrero Street, Brgy. Mauwag, City of Mandaluyong. Several decades ago, on a portion of the said lots, respondents constructed residential houses which they leased out to tenants and on the vacant portion, other families also constructed residential structures which they likewise occupied. In 1983, those lots were classified by the Board of the Housing and Urban Development Coordinating Counsel as an area for priority development for urban land

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[22] *D.M. Consunji, Inc. v. Esguerra*, 260 SCRA 74, 86 (1996).

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reform under Proclamation Nos. 1967 and 2284. As a result, the tenants and occupants of the said lots offered to purchase those lots from respondents but the latter refused. On November 7, 1996, the Sangguniang Panglungsod of the City of Mandaluyong authorized Mayor Benjamin Abalos through a resolution to initiate action for the expropriation of the subject lots and the construction of a medium-rise condominium for qualified occupants therein. On January 10, 1996, Mayor Abalos sent a letter to respondents offering to purchase the said lots, but the latter did not answer. Thus, Mayor Abalos filed a complaint for expropriation before the Regional Trial Court, Branch 168 of Pasig City. In their answer, respondents alleged that the expropriation of their land is arbitrary and capricious and is not for public purpose. Moreover, the subject lots are their only real property and are too small for expropriation. On November 5, 1997, petitioner filed an Amended Complaint. It reduced the area sought to be expropriated to two parcels of land only totalling 1,636 square meters. At the preliminary hearing, Antonio Aguilar testified and presented documentary evidence to support their claims while petitioner did not present any evidence. On September 17, 1997, the trial court dismissed the Amended Complaint. Hence, this petition.

The Court ruled that upon partition, four (4) co-owners, namely, Francisco, Thelma, Rodolfo and Antonio Aguilar each had a share of 300 square meters under TCT Nos.13849, 13852, 13850, 13851. Eusebio Aguilar's share was 347 square meters under TCT No. 13853, while Virginia Aguilar's was 89 square meters under TCT No. 13854. Eusebio died on March 23, 1995, and, according to Antonio's testimony, the former was survived by five (5) children. Where there are several co-owners, and some of them die, the heirs of those who die, with respect to that part belonging to the deceased, become also co-owners of the property together with those who survive. After Eusebio died, his five heirs became co-owners of his 347 square-meter portion. Dividing the 347 square meters among the five would entitle each heir to 69.4 square meters of the land subject of litigation. Consequently, the share of each co-owner did not exceed the 300 square meter limit set in R.A. 7279. Finally, the Court noted that the subject lots are now in the possession of respondents. Antonio Aguilar testified that he and the other co-owners filed ejectment cases against the occupants of the

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land before the Metropolitan Trial Court, Mandaluyong, Branches 59 and 60. Orders of eviction were issued and executed on September 17, 1997 which resulted in the eviction of the tenants and other occupants from the land in question.

Petition was DISMISSED.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; PRESIDENTIAL DECREE NO. 1517 (URBAN LAND REFORM ACT); OPTIMUM USE OF LAND AS A NATIONAL RESOURCE FOR PUBLIC WELFARE.** — Presidential Decree (P.D.) No. 1517, the Urban Land Reform Act, was issued by then President Marcos in 1978. The decree adopted as a State policy the liberation of human communities from blight, congestion and hazard, and promotion of their development and modernization, the optimum use of land as a national resource for public welfare. Pursuant to this law, Proclamation No. 1893 was issued in 1979 declaring the entire Metro Manila as Urban Land Reform Zone for purposes of urban land reform. This was amended in 1980 by Proclamation No. 1967 and in 1983 by Proclamation No. 2284 which identified and specified 245 sites in Metro Manila as Areas for Priority Development and Urban Land Reform Zones.

2. **ID.; REPUBLIC ACT NO. 7279 (URBAN DEVELOPMENT HOUSING ACT OF 1992); PURPOSE.** — In 1992, the Congress of the Philippines passed Republic Act No. 7279, the "Urban Development and Housing Act of 1992." The law lays down as a policy that the state, in cooperation with the private sector, undertake a comprehensive and continuing Urban Development and Housing Program; uplift the conditions of the underprivileged and homeless citizens in urban areas and resettlement areas by making available to them decent housing at affordable cost, basic services and employment opportunities and provide for the rational use and development of urban land to bring about, among others, equitable utilization of residential lands; encourage more effective people's participation in the urban development process and improve the capability of local government units in undertaking urban development and housing programs and projects.

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3. **ID.; ID.; PROCEDURE FOR ACQUISITION OF LAND FOR SOCIALIZED HOUSING.** — Towards this end, all city and municipal governments are mandated to conduct an *inventory* of all lands and improvements within their respective localities, and in coordination with the National Housing Authority, the Housing and Land Use Regulatory Board, the National Mapping Resource Information Authority, and the Land Management Bureau, *identify* lands for socialized housing and resettlement areas for the immediate and future needs of the underprivileged and homeless in the urban areas, *acquire* the lands, and *dispose* of said lands to the beneficiaries of the program.

4. **ID.; ID.; PRIORITIES IN THE ACQUISITION OF LAND FOR SOCIALIZED HOUSING.** — Lands for socialized housing are to be acquired in the following order: (1) government lands; (2) alienable lands of the public domain; (3) unregistered or abandoned or idle lands; (4) lands within the declared Areas for Priority Development (APD), Zonal Improvement Program (ZIP) sites, Slum Improvement and Resettlement (SIR) sites which have not yet been acquired; (5) BLISS sites which have not yet been acquired; and (6) privately-owned lands.

5. **ID.; ID.; MODES OF LAND ACQUISITION.** — Lands for socialized housing under R.A. 7279 are to be acquired in several modes. Among these modes are the following: (1) community mortgage; (2) land swapping, (3) land assembly or consolidation; (4) land banking; (5) donation to the government; (6) joint venture agreement; (7) negotiated purchase; and (8) expropriation. The mode of expropriation is subject to two conditions: (a) it shall be resorted to only when the other modes of acquisition have been exhausted; and (b) parcels of land owned by small property owners are exempt from such acquisition.

6. **ID.; ID.; ACQUISITION OF THE LANDS IN THE PRIORITY LIST MUST BE MADE SUBJECT TO THE MODES AND CONDITIONS AS REQUIRED THEREIN.** — Section 9 of R.A. 7279 speaks of *priorities* in the acquisition of lands. It enumerates the type of lands to be acquired and the heirarchy in their acquisition. Section 10 deals with the *modes* of land acquisition or the process of acquiring lands for socialized housing. These are two different things. *They mean that the*

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type of lands that may be acquired in the order of priority in Section 9 are to be acquired only in the modes authorized under Section 10. The acquisition of the lands in the priority list must be made subject to the modes and conditions set forth in the next provision. In other words, land that lies within the APD, such as in the instant case, may be acquired only in the modes under, and subject to the conditions of, Section 10.

7. **ID.; ID.; EXPROPRIATION SHALL BE RESORTED TO WHEN OTHER MODES OF ACQUISITION HAVE BEEN EXHAUSTED; NOT COMPLIED WITH IN CASE AT BAR.** — Petitioner claims that it had faithfully observed the different modes of land acquisition for socialized housing under R.A. 7279 and adhered to the priorities in the acquisition for socialized housing under said law. It, however, did not state with particularity whether it *exhausted* the other modes of acquisition in Section 9 of the law before it decided to expropriate the subject lots. The law states "expropriation shall be resorted to when other modes of acquisition have been exhausted." Petitioner alleged only one mode of acquisition, i.e., by negotiated purchase. Petitioner, through the City Mayor, tried to purchase the lots from respondents but the latter refused to sell. As to the other modes of acquisition, no mention has been made. Not even Resolution No. 516, Series of 1996 of the Sangguniang Panlungsod authorizing the Mayor of Mandaluyong to effect the expropriation of the subject property states whether the city government tried to acquire the same by community mortgage, land swapping, land assembly or consolidation, land banking, donation to the government, or joint venture agreement under Section 9 of the law.

8. **ID.; ID.; PARCELS OF LAND OWNED BY SMALL-PROPERTY OWNERS ARE EXEMPTED FROM EXPROPRIATION.** — While we adhere to the expanded notion of public use, the passage of R.A. No. 7279, the "Urban Development and Housing Act of 1992" introduced a limitation on the size of the land sought to be expropriated for socialized housing. The law expressly exempted "small property owners" from expropriation of their land for urban land reform. R.A. No. 7279 originated as Senate Bill No. 234 authored by Senator Joey Lina and House Bill No. 34310. Senate Bill No. 234 then provided that one of those lands not covered by the urban

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land reform and housing program was "land actually used by small property owners within the just and equitable retention limit as provided under this Act."

9. **ID.; ID.; "SMALL-PROPERTY OWNERS"; DEFINED.** — "Small-property owners" are defined by two elements: (1) those owners of real property whose property consists of residential lands with an area of not more than 300 square meters in highly urbanized cities and 800 square meters in other urban areas; and (2) that they do not own real property other than the same.

10. **CIVIL LAW; PROPERTY; CO-OWNERSHIP; NO INDIVIDUAL CAN CLAIM TITLE TO ANY DEFINITE PORTION OF COMMUNITY PROPERTY UNTIL THE PARTITION THEREOF.** — Under a co-ownership, the ownership of an undivided thing or right belongs to different persons. During the existence of the co-ownership, no individual can claim title to any definite portion of the community property until the partition thereof; and prior to the partition, all that the co-owner has is an ideal or abstract quota or proportionate share in the entire land or thing

11. **ID.; ID.; ID.; CO-OWNER IS FREE TO ALIENATE, ASSIGN OR MORTGAGE HIS UNDIVIDED INTEREST IN THE COMMON PROPERTY.** — Article 493 of the Civil Code however provides that: "Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners shall be limited to the portion which may be allotted to him in the division upon termination of the co-ownership." Before partition in a co-ownership, every co-owner has the absolute ownership of his undivided interest in the common property. The co-owner is free to alienate, assign or mortgage his interest, except as to purely personal rights. He may also validly lease his undivided interest to a third party independently of the other co-owners. The effect of any such transfer is limited to the portion which may be awarded to him upon the partition of the property. Article 493 therefore gives the owner of an undivided interest in the property the right to freely sell and dispose of

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his undivided interest. The co-owner, however, has no right to sell or alienate a concrete specific or determinate part of the thing owned in common, because his right over the thing is represented by a quota or ideal portion without any physical adjudication. If the co-owner sells a concrete portion, this, nonetheless, does not render the sale void. Such a sale affects only his own share, subject to the results of the partition but not those of the other co-owners who did not consent to the sale.

12. **ID.; ID.; ID.; PARTITION WAS NECESSARY INCIDENT OF CO-OWNERSHIP AND PRESUMED TO HAVE BEEN DONE IN GOOD FAITH; CASE AT BAR.** — In the instant case, the titles to the subject lots were issued in respondents' names as co-owners in 1987—ten (10) years before the expropriation case was filed in 1997. As co-owners, all that the respondents had was an ideal or abstract quota or proportionate share in the lots. This, however, did not mean that they could not separately exercise any rights over the lots. Each respondent had the full ownership of his undivided interest in the property. He could freely sell or dispose of his interest independently of the other co-owners. And this interest could have even been attached by his creditors. The partition in 1998, six (6) months after the filing of the expropriation case, terminated the co-ownership by converting into certain and definite parts the respective undivided shares of the co-owners. The subject property is not a thing essentially indivisible. The rights of the co-owners to have the property partitioned and their share in the same delivered to them cannot be questioned for "[n]o co-owner shall be obliged to remain in the co-ownership." The partition was merely a necessary incident of the co-ownership; and absent any evidence to the contrary, this partition is presumed to have been done in good faith.

13. **LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 7279 (URBAN DEVELOPMENT AND HOUSING ACT OF 1992); "SMALL-PROPERTY OWNER"; SHARE OF EACH CO-OWNER OF THE PROPERTY SOUGHT TO BE EXPROPRIATED DID NOT EXCEED THE 300 SQUARE METER LIMIT; CASE AT BAR.** — Upon partition, four (4) co-owners, namely, Francisco, Thelma, Rodolfo and Antonio Aguilar each had a share of 300 square meters under TCT Nos.

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13849, 13852, 13850, 13851. Eusebio Aguilar's share was 347 square meters under TCT No. 13853 while Virginia Aguilar's was 89 square meters under TCT No. 13854. It is noted that Virginia Aguilar, although granted 89 square meters only of the subject lots, is, at the same time, the sole registered owner of TCT No. 59780, one of the three (3) titles *initially* sought to be expropriated in the original complaint. TCT No. 59780, with a land area of 211 square meters, was dropped in the amended complaint. Eusebio Aguilar was granted 347 square meters, which is 47 square meters more than the maximum of 300 square meters set by R.A. 7279 for small property owners. In TCT No. 13853, Eusebio's title, however, appears the following annotation: "... subject to x x x, and to the prov. of Sec. 4 Rule 74 of the Rules of Court with respect to the inheritance left by the deceased Eusebio N. Aguilar." Eusebio died on March 23, 1995, and, according to Antonio's testimony, the former was survived by five (5) children. Where there are several co-owners, and some of them die, the heirs of those who die, with respect to that part belonging to the deceased, become also co-owners of the property together with those who survive. After Eusebio died, his five heirs became co-owners of his 347 square-meter portion. Dividing the 347 square meters among the five entitled each heir to 69.4 square meters of the land subject of litigation. Consequently, the share of each co-owner did not exceed the 300 square meter limit set in R.A. 7279.

14. ID.; ID.; ID.; PROPERTY OWNERS DO NOT APPEAR TO OWN REAL PROPERTY OTHER THAN THE LOTS SUBJECT OF EXPROPRIATION; ESTABLISHED IN CASE AT BAR. — Antonio Aguilar testified that he and most of the original co-owners do not reside on the subject property but in their ancestral home in Paco, Manila. Respondents therefore appear to own real property other than the lots in litigation. Nonetheless, the records do not show that the ancestral home in Paco, Manila and the land on which it stands are owned by respondents or any one of them. Petitioner did not present any title or proof of this fact despite Antonio Aguilar's testimony. On the other hand, respondents claim that the subject lots are their only real property and that they, particularly two of the five heirs of Eusebio Aguilar, are merely renting

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their houses and therefore do not own any other real property in Metro Manila. To prove this, they submitted certifications from the offices of the City and Municipal Assessors in Metro Manila attesting to the fact that they have no registered real property declared for taxation purposes in the respective cities. Respondents were certified by the City Assessor of Manila; Quezon City; Makati City; Pasay City; Paranaque; Caloocan City; Pasig City; Muntinlupa; Marikina; and the then municipality of Las Piñas and the municipality of San Juan del Monte as having no real property registered for taxation in their individual names.

15. **ID.; ID.; MODES OF LAND ACQUISITION; EXPROPRIATION; PUBLIC PURPOSE WAS NEGATED BY EVICTION OF TENANTS AND OTHER OCCUPANTS FROM THE LAND IN QUESTION.** — Finally, this court notes that the subject lots are now in the possession of respondents. Antonio Aguilar testified that he and the other co-owners filed ejectment cases against the occupants of the land before the Metropolitan Trial Court, Mandaluyong, Branches 59 and 60. Orders of eviction were issued and executed on September 17, 1997 which resulted in the eviction of the tenants and other occupants from the land in question.

APPEARANCES OF COUNSEL

Jimmy D. Lacebal for petitioner.
Ricardo J.M. Rivera Law Office for private respondents.

D E C I S I O N

PUNO, *J.*:

This is a petition for review under Rule 45 of the Rules of Court of the Orders dated September 17, 1998 and December 29, 1998 of the Regional Trial Court, Branch 168, Pasig City[1] dismissing the petitioner's Amended Complaint in SCA No. 1427 for expropriation of two (2) parcels of land in Mandaluyong City.

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[1] Penned by Judge Benjamin V. Pelayo.

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The antecedent facts are as follows:

On August 4, 1997, petitioner filed with the Regional Trial Court, Branch 168, Pasig City a complaint for expropriation entitled *"City of Mandaluyong, plaintiff v. Antonio N., Francisco N., Thelma N., Eusebio N., Rodolfo N., all surnamed Aguilar, defendants."* Petitioner sought to expropriate three (3) adjoining parcels of land with an aggregate area of 1,847 square meters registered under Transfer Certificates of Title Nos. 59780, 63766 and 63767 in the names of the defendants, herein respondents, located at 9 de Febrero Street, Barangay Mauwag, City of Mandaluyong; on a portion of the 3 lots, respondents constructed residential houses several decades ago which they had since leased out to tenants until the present; on the vacant portion of the lots, other families constructed residential structures which they likewise occupied; in 1983, the lots were classified by Resolution No. 125 of the Board of the Housing and Urban Development Coordinating Council as an Area for Priority Development for urban land reform under Proclamation Nos. 1967 and 2284 of then President Marcos; as a result of this classification, the tenants and occupants of the lots offered to purchase the land from respondents, but the latter refused to sell; on November 7, 1996, the Sangguniang Panlungsod of petitioner, upon petition of the Kapitbisig, an association of tenants and occupants of the subject land, adopted Resolution No. 516, Series of 1996 authorizing Mayor Benjamin Abalos of the City of Mandaluyong to initiate action for the expropriation of the subject lots and construction of a medium-rise condominium for qualified occupants of the land; on January 10, 1996, Mayor Abalos sent a letter to respondents offering to purchase the said property at ₱3,000.00 per square meter; respondents did not answer the letter. Petitioner thus prayed for the expropriation of the said lots and the fixing of just compensation at the fair market value of ₱3,000.00 per square meter.[2]

In their answer, respondents, except Eusebio N. Aguilar who died in 1995, denied having received a copy of Mayor Abalos'

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[2] Complaint, Records, pp. 2-6.

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offer to purchase their lots. They alleged that the expropriation of their land is arbitrary and capricious, and is not for a public purpose; the subject lots are their only real property and are too small for expropriation, while petitioner has several properties inventoried for socialized housing; the fair market value of ₱3,000.00 per square meter is arbitrary because the zonal valuation set by the Bureau of Internal Revenue is ₱7,000.00 per square meter. As counterclaim, respondents prayed for damages of ₱21 million.[3]

Respondents filed a "Motion for Preliminary Hearing" claiming that the defenses alleged in their Answer are valid grounds for dismissal of the complaint for lack of jurisdiction over the person of the defendants and lack of cause of action. Respondents prayed that the affirmative defenses be set for preliminary hearing and that the complaint be dismissed.[4] Petitioner replied.

On November 5, 1997, petitioner filed an Amended Complaint and named as an additional defendant Virginia N. Aguilar and, at the same time, substituted Eusebio Aguilar with his heirs. Petitioner also excluded from expropriation TCT No. 59870 and thereby reduced the area sought to be expropriated from three (3) parcels of land to two (2) parcels totalling 1,636 square meters under TCT Nos. 63766 and 63767.[5]

The Amended Complaint was admitted by the trial court on December 18, 1997. Respondents, who, with the exception of Virginia Aguilar and the Heirs of Eusebio Aguilar had yet to be served with summons and copies of the Amended Complaint, filed a "Manifestation and Motion" adopting their "Answer with Counterclaim" and "Motion for Preliminary Hearing" as their answer to the Amended Complaint.[6]

The motion was granted. At the hearing of February 25, 1998, respondents presented Antonio Aguilar who testified and

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[3] Answer with Counterclaim, Records, pp. 73-84.

[4] Records, pp. 97-109.

[5] Amended Complaint, Records, pp. 117-121.

[6] Records, p. 134.

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identified several documentary evidence. Petitioner did not present any evidence. Thereafter, both parties filed their respective memoranda.[7]

On September 17, 1998, the trial court issued an order dismissing the Amended Complaint after declaring respondents as "small property owners" whose land is exempt from expropriation under Republic Act No. 7279. The court also found that the expropriation was not for a public purpose for petitioner's failure to present any evidence that the intended beneficiaries of the expropriation are landless and homeless residents of Mandaluyong. The court thus disposed of as follows:

"WHEREFORE, the Amended Complaint is hereby ordered dismissed without pronouncement as to cost.

SO ORDERED."[8]

Petitioner moved for reconsideration. On December 29, 1998, the court denied the motion. Hence this petition.

Petitioner claims that the trial court erred

"IN UPHOLDING RESPONDENT'S CONTENTION THAT THEY QUALIFY AS SMALL PROPERTY OWNERS AND ARE THUS EXEMPT FROM EXPROPRIATION."[9]

Petitioner mainly claims that the size of the lots in litigation does not exempt the same from expropriation in view of the fact that the said lots have been declared to be within the Area for Priority Development (APD) No. 5 of Mandaluyong by virtue of Proclamation No. 1967, as amended by Proclamation No. 2284 in relation to Presidential Decree No. 1517.[10] This declaration allegedly authorizes petitioner to expropriate the property, *ipso facto*, regardless of the area of the land.

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[7] Records, pp. 257-283, 285-291.

[8] Records, p. 297.

[9] Petition, p. 3, *Rollo*, p. 5.

[10] Petition, pp. 4, 6, *Rollo*, pp. 6, 8.

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Presidential Decree (P.D.) No. 1517, the Urban Land Reform Act, was issued by then President Marcos in 1978. The decree adopted as a State policy the liberation of human communities from blight, congestion and hazard, and promotion of their development and modernization, the optimum use of land as a national resource for public welfare.[11] Pursuant to this law, Proclamation No. 1893 was issued in 1979 declaring the entire Metro Manila as Urban Land Reform Zone for purposes of urban land reform. This was amended in 1980 by Proclamation No. 1967 and in 1983 by Proclamation No. 2284 which identified and specified 245 sites in Metro Manila as Areas for Priority Development and Urban Land Reform Zones.

In 1992, the Congress of the Philippines passed Republic Act No. 7279, the "Urban Development and Housing Act of 1992." The law lays down as a policy that the state, in cooperation with the private sector, undertake a comprehensive and continuing Urban Development and Housing Program; uplift the conditions of the underprivileged and homeless citizens in urban areas and resettlement areas by making available to them decent housing at affordable cost, basic services and employment opportunities and provide for the rational use and development of urban land to bring about, among others, equitable utilization of residential lands; encourage more effective people's participation in the urban development process and improve the capability of local government units in undertaking urban development and housing programs and projects.[12] Towards this end, all city and municipal governments are mandated to conduct an *inventory* of all lands and improvements within their respective localities, and in coordination with the National Housing Authority, the Housing and Land Use Regulatory Board, the National Mapping Resource Information Authority, and the Land Management Bureau, *identify* lands for socialized housing and resettlement areas for the immediate and future needs of the underprivileged and homeless

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[11] Section 2, P.D. 1517.

[12] Section 2, R.A. 7279.

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in the urban areas, *acquire* the lands, and *dispose* of said lands to the beneficiaries of the program.[13]

The acquisition of lands for socialized housing is governed by several provisions in the law. Section 9 of R.A. 7279 provides:

"*Sec. 9. Priorities in the Acquisition of Land.* — Lands for socialized housing shall be acquired in the following order:

(a) Those owned by the Government or any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporations and their subsidiaries;

(b) Alienable lands of the public domain;

(c) Unregistered or abandoned and idle lands;

(d) Those within the declared Areas for Priority Development, Zonal Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;

(e) Bagong Lipunan Improvement of Sites and Services or BLISS Sites which have not yet been acquired;

(f) Privately-owned lands.

Where on-site development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this section shall not apply. The local government units shall give budgetary priority to on-site development of government lands."

Lands for socialized housing are to be acquired in the following order: (1) government lands; (2) alienable lands of the public domain; (3) unregistered or abandoned or idle lands; (4) lands within the declared Areas for Priority Development (APD), Zonal Improvement Program (ZIP) sites, Slum Improvement and Resettlement (SIR) sites which have not yet been acquired; (5) BLISS sites which have not yet been acquired; and (6) privately-owned lands.

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[13] R.A. No. 7279, Secs. 7 and 8, 9 and 12.

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There is no dispute that the two lots in litigation are privately-owned and therefore last in the order of priority acquisition. However, the law also provides that lands within the declared APD's which have not yet been acquired by the government are fourth in the order of priority. According to petitioner, since the subject lots lie within the declared APD, this fact mandates that the lots be given priority in acquisition.[14]

Section 9, however, is not a single provision that can be read separate from the other provisions of the law. It must be read together with Section 10 of R.A. 7279 which also provides:

"*Section 10. Modes of Land Acquisition.* — The modes of acquiring lands for purposes of this Act shall include, among others, community mortgage, land swapping, land assembly or consolidation, land banking, donation to the Government, joint-venture agreement, negotiated purchase, and expropriation: *Provided, however, That expropriation shall be resorted to only when other modes of acquisition have been exhausted: Provided, further, That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act: Provided, finally,* That abandoned property, as herein defined, shall be reverted and escheated to the State in a proceeding analogous to the procedure laid down in Rule 91 of the Rules of Court.[15]

For the purposes 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."

Lands for socialized housing under R.A. 7279 are to be acquired in several modes. Among these modes are the following: (1) community mortgage; (2) land swapping, (3) land assembly or consolidation; (4) land banking; (5) donation to the government; (6) joint venture agreement; (7) negotiated purchase; and (8) expropriation. The mode of expropriation is subject to two conditions: (a) it shall be resorted to only when the other modes

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[14] Petition, p. 6, *Rollo*, p. 8.

[15] Italics supplied.

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of acquisition have been exhausted; and (b) parcels of land owned by small property owners are exempt from such acquisition.

Section 9 of R.A. 7279 speaks of *priorities* in the acquisition of lands. It enumerates the type of lands to be acquired and the heirarchy in their acquisition. Section 10 deals with the *modes* of land acquisition or the process of acquiring lands for socialized housing. These are two different things. *They mean that the type of lands that may be acquired in the order of priority in Section 9 are to be acquired only in the modes authorized under Section 10.* The acquisition of the lands in the priority list must be made subject to the modes and conditions set forth in the next provision. In other words, land that lies within the APD, such as in the instant case, may be acquired only in the modes under, and subject to the conditions of, Section 10.

Petitioner claims that it had faithfully observed the different modes of land acquisition for socialized housing under R.A. 7279 and adhered to the priorities in the acquisition for socialized housing under said law.[16] It, however, did not state with particularity whether it *exhausted* the other modes of acquisition in Section 9 of the law before it decided to expropriate the subject lots. The law states "expropriation shall be resorted to when other modes of acquisition have been exhausted." Petitioner alleged only one mode of acquisition, *i.e.*, by negotiated purchase. Petitioner, through the City Mayor, tried to purchase the lots from respondents but the latter refused to sell.[17] As to the other modes of acquisition, no mention has been made. Not even Resolution No. 516, Series of 1996 of the Sangguniang Panlungsod authorizing the Mayor of Mandaluyong to effect the expropriation of the subject property states whether the city government tried to acquire the same by community mortgage, land swapping, land assembly or consolidation, land banking, donation to the government, or joint venture agreement under Section 9 of the law.

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[16] Petition, p. 6, *Rollo*, p. 8.

[17] Petition, p. 4, *Rollo*, p. 6.

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Section 9 also exempts from expropriation parcels of land owned by small property owners.[18] Petitioner argues that the exercise of the power of eminent domain is not anymore conditioned on the size of the land sought to be expropriated.[19] By the expanded notion of public use, present jurisprudence has established the concept that expropriation is not anymore confined to the vast tracts of land and landed estates, but also covers small parcels of land.[20] That only a few could actually benefit from the expropriation of the property does not diminish its public use character.[21] It simply is not possible to provide, in one instance, land and shelter for all who need them.[22]

While we adhere to the expanded notion of public use, the passage of R.A. No. 7279, the "Urban Development and Housing Act of 1992" introduced a limitation on the size of the land sought to be expropriated for socialized housing. The law expressly exempted "small property owners" from expropriation of their land for urban land reform. R.A. No. 7279 originated as Senate

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[18] Likewise exempt are idle residential lands also owned by small property owners under Section 11 of the law which reads:

"Sec. 11. *Expropriation of idle lands.* — All idle lands in urban lands in urban and urbanizable areas, as defined and identified in accordance with this Act, shall be expropriated and shall form part of the public domain. These lands shall be disposed of or utilized by the Government for such purposes that conform with their land use plans. Expropriation proceedings shall be instituted if, after the lapse of one (1) year following receipt of notice of acquisition, the owner fails to introduce improvements as defined in Section 3 (f) hereof, except in the case of force majeure and other fortuitous events. *Exempted from this provision, however, are residential lands owned by small property owners or those the ownership of which is subject of a pending litigation.*"

[19] Petition, pp. 8-10, *Rollo*, pp. 10-12.

[20] *Phil. Columbian Association v. Panis*, 228 SCRA 668, 673 [1993]; *J. M. Tuason & Co., Inc. v. Land Tenure Administration*, 31 SCRA 413, 427-428 [1970].

[21] *Phil. Columbian Association v. Panis, supra*, at 673; *Sumulong v. Guerrero*, 154 SCRA 461 [1987].

[22] *Ibid.*

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Bill No. 234 authored by Senator Joey Lina[23] and House Bill No. 34310. Senate Bill No. 234 then provided that one of those lands not covered by the urban land reform and housing program was "land actually used by small property owners within the just and equitable retention limit as provided under this Act."[24] Small property owners" were defined in Senate Bill No. 234 as:

"4. Small Property Owners — are those whose rights are protected under Section 9, Article XIII of the Constitution of the Philippines, who own small parcels of land within the fair and just retention limit provided under this Act and which are adequate to meet the reasonable needs of the small property owner's family and their means of livelihood."[25]

The exemption from expropriation of lands of small-property owners was never questioned on the Senate floor.[26] This exemption, although with a modified definition, was actually retained in the consolidation of Senate Bill No. 234 and House Bill No. 34310 which became R.A. No. 7279.[27]

The question now is whether respondents qualify as "small property owners" as defined in Section 3 (q) of R.A. 7279. Section 3 (q) provides:

"Section 3 x x x (q). "Small property owners" refers to those whose only real property consists of residential lands not exceeding three hundred square meters (300 sq.m.) in highly urbanized cities and eight hundred square meters (800 sq.m.) in other urban areas."

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[23] Co-authored by Senators Estrada, Saguisag, Tañada, Herrera and Romulo.

[24] Sec. 4 (5), Senate Bill No. 234, Record of the Senate, Sept. 2, 1991, Vol. I, No. 20, p. 740-741.

[25] Record of the Senate, Sept. 2, 1991, Vol. I, No. 20, p. 741.

[26] See Interpellations, Record of the Senate, Oct. 22, 1991, Vol. II, No. 47, pp. 374-376; Oct. 23, 1991, Vol. II, No. 47, pp. 409-412; Nov. 26, 1991, Vol. II, No. 55, pp. 689-693; Nov. 28, 1991, Vol. II, No. 57, pp. 764-768; Feb. 3, 1992, Vol. IV, No. 60, pp. 79, 81.

[27] See Conference Committee Report, Record of the Senate, Feb. 3, 1992, Vol. IV, No. 60, pp. 84, 85-86.

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"Small-property owners" are defined by two elements: (1) those owners of real property whose property consists of residential lands with an area of not more than 300 square meters in highly urbanized cities and 800 square meters in other urban areas; and (2) that they do not own real property other than the same.

The case at bar involves two (2) residential lots in Mandaluyong City, a highly urbanized city. The lot under TCT No. 63766 is 687 square meters in area and the second under TCT No. 63767 is 949 square meters, both totalling 1,636 square meters in area. TCT No. 63766 was issued in the names of herein five (5) respondents, *viz*:

"FRANCISCO N. AGUILAR, widower; THELMA N. AGUILAR, single; EUSEBIO N. AGUILAR, JR., widower; RODOLFO N. AGUILAR, single and ANTONIO N. AGUILAR, married to Teresita Puig; all of legal age, Filipinos."[28]

TCT No. 63767 was issued in the names of the five (5) respondents *plus* Virginia Aguilar, thus:

"FRANCISCO N. AGUILAR, widower; THELMA N. AGUILAR, single; EUSEBIO N. AGUILAR, JR., widower; RODOLFO N. AGUILAR, single and ANTONIO N. AGUILAR, married to Teresita Puig; and VIRGINIA N. AGUILAR, single, all of legal age, Filipinos."[29]

Respondent Antonio Aguilar testified that he and the other registered owners are all siblings who inherited the subject property by intestate succession from their parents.[30] Their father died in 1945 and their mother in 1976.[31] Both TCT's were issued in the siblings' names on September 2, 1987.[32] In 1986, however, the siblings agreed to extrajudicially partition the lots among themselves, but no action was taken by them to this end. It was

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[28] Exhibit "1", Records, p. 123.

[29] Exhibit "2", Records, p. 124.

[30] TSN of February 25, 1998, pp. 10-12.

[31] TSN of June 17, 1998, pp. 7-8, 10.

[32] Exhibits "1" and "2", Records, pp. 123-124.

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only eleven (11) years later, on November 28, 1997 that a survey of the two lots was made[33] and on February 10, 1998, a consolidation subdivision plan was approved by the Lands Management Service of the Department of Environment and Natural Resources.[34] The co-owners signed a Partition Agreement on February 24, 1998[35] and on May 21, 1998, TCT Nos. 63766 and 63767 were cancelled and new titles issued in the names of the individual owners pursuant to the Partition Agreement.

Petitioner argues that the consolidation of the subject lots and their partition was made more than six (6) months after the complaint for expropriation was filed on August 4, 1997, hence, the partition was made in bad faith, for the purpose of circumventing the provisions of R.A. 7279.[36]

At the time of filing of the complaint for expropriation, the lots subject of this case were owned in common by respondents. Under a co-ownership, the ownership of an undivided thing or right belongs to different persons.[37] During the existence of the co-ownership, no individual can claim title to any definite portion of the community property until the partition thereof; and prior to the partition, all that the co-owner has is an ideal or abstract quota or proportionate share in the entire land or thing.[38] Article 493 of the Civil Code however provides that:

"*Art. 493*. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved.

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[33] Exhibit "3", Records, p. 164.

[34] *Ibid*.

[35] Exhibit "4", Records, pp. 171-175.

[36] Petition, p. 5, *Rollo*, p. 7.

[37] Article 484, Civil Code; *Alejandrino v. Court of Appeals*, 295 SCRA 536, 548 [1998].

[38] *Oliveras v. Lopez*, 168 SCRA 431, 437 [1988]; *Diversified Credit Corp. v. Rosado*, 135 Phil. 491,495 [1968]; see also cases in *Aquino*, Civil Code, vol. I, p. 508 [1990].

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But the effect of the alienation or the mortgage, with respect to the co-owners shall be limited to the portion which may be allotted to him in the division upon termination of the co-ownership."[39]

Before partition in a co-ownership, every co-owner has the absolute ownership of his undivided interest in the common property. The co-owner is free to alienate, assign or mortgage his interest, except as to purely personal rights.[40] He may also validly lease his undivided interest to a third party independently of the other co-owners.[41] The effect of any such transfer is limited to the portion which may be awarded to him upon the partition of the property.[42]

Article 493 therefore gives the owner of an undivided interest in the property the right to freely sell and dispose of his undivided interest.[43] The co-owner, however, has no right to sell or alienate a concrete specific or determinate part of the thing owned in common, because his right over the thing is represented by a quota or ideal portion without any physical adjudication.[44] If the co-owner sells a concrete portion, this, nonetheless, does not render the sale void. Such a sale affects only his own share, subject to the results of the partition but not those of the other co-owners who did not consent to the sale.[45]

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[39] Article 493 Civil Code.

[40] The term "personal rights" refers to the personal relations of one co-owner to the others, as when the family residence is used by the children as co-owners—Padilla, *Civil Code*, Vol. II, pp. 300 & 301 [1972]; Tolentino, *Civil Code,* Bk. II, p. 203 [1992].

[41] *Vda. De Castro v. Atienza*, 53 SCRA 264, 268 [1973].

[42] *Ramirez v. Bautista*, 14 Phil. 528, 532-533 [1909]; also cited in Padilla, *Civil Code,* Vol. II, p. 302 [1972] and Aquino, *Civil Code,* Vol. I, p. 510 [1990].

[43] *Acebedo v. Abesamis*, 217 SCRA 186, 194-195 [1993]; Tolentino, *Civil Code,* Vol. 11, p. 201 [1992].

[44] *Abad v. Court of Appeals*, 179 SCRA 817, 826 [1989]*; Bailon-Casilao v. Court of Appeals*, 160 SCRA 738, 745 [1988]; *Santos v. Buenconsejo*, 14 SCRA 407, 409 [1965]; *Ramirez v. Bautista, supra.*

[45] *Bailon-Casilao v. Court of Appeals*, 160 SCRA 738, 745 [1988]; *Lopez v. Gonzaga Vda. de Cuaycong*, 74 Phil. 601, 607 [1944]; *Punsalan v. Boon Liat*, 44 Phil. 320, 324 [1923].

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In the instant case, the titles to the subject lots were issued in respondents' names as co-owners in 1987—ten (10) years before the expropriation case was filed in 1997. As co-owners, all that the respondents had was an ideal or abstract quota or proportionate share in the lots. This, however, did not mean that they could not separately exercise any rights over the lots. Each respondent had the full ownership of his undivided interest in the property. He could freely sell or dispose of his interest independently of the other co-owners. And this interest could have even been attached by his creditors.[46] The partition in 1998, six (6) months after the filing of the expropriation case, terminated the co-ownership by converting into certain and definite parts the respective undivided shares of the co-owners.[47] The subject property is not a thing essentially indivisible. The rights of the co-owners to have the property partitioned and their share in the same delivered to them cannot be questioned for "[n]o co-owner shall be obliged to remain in the co-ownership."[48] The partition was merely a necessary incident of the co-ownership;[49] and absent any evidence to the contrary, this partition is presumed to have been done in good faith.

Upon partition, four (4) co-owners, namely, Francisco, Thelma, Rodolfo and Antonio Aguilar each had a share of 300 square meters under TCT Nos. 13849, 13852, 13850, 13851.[50] Eusebio Aguilar's share was 347 square meters under TCT No. 13853[51] while Virginia Aguilar's was 89 square meters under TCT No. 13854.[52]

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[46] *Gotauco & Co. v. Register of Deeds*, 59 Phil. 756, 757 [1934]; see also *Tolentino*, *supra*, at 201, citing *Cadag v. Trinanes*, (C.A.), 40 O.G., No. 8, 4th Suppl. 324 [1939].

[47] Tolentino, *supra*, at 204, citing 3 Manresa 508.

[48] Article 494, Civil Code; see also *Ferrer v. Rilloraza*, 55 O.G., No. 9, 1575, 1580 [1959].

[49] *Ferrer v. Rilloraza*, (C.A.) 55 O.G. 1575, 1580 [1959]; also cited in Tolentino, *supra*, at 204-205.

[50] Exhibits "12" to "15", Records, pp. 242-245.

[51] Exhibit "16", Records, p. 246.

[52] Exhibit "17", Records, p. 247.

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It is noted that Virginia Aguilar, although granted 89 square meters only of the subject lots, is, at the same time, the sole registered owner of TCT No. 59780, one of the three (3) titles *initially* sought to be expropriated in the original complaint. TCT No. 59780, with a land area of 211 square meters, was dropped in the amended complaint. Eusebio Aguilar was granted 347 square meters, which is 47 square meters more than the maximum of 300 square meters set by R.A. 7279 for small property owners. In TCT No. 13853, Eusebio's title, however, appears the following annotation:

". . . subject to x x x, and to the prov. of Sec. 4 Rule 74 of the Rules of Court with respect to the inheritance left by the deceased Eusebio N. Aguilar."[53]

Eusebio died on March 23, 1995,[54] and, according to Antonio's testimony, the former was survived by five (5) children.[55] Where there are several co-owners, and some of them die, the heirs of those who die, with respect to that part belonging to the deceased, become also co-owners of the property together with those who survive.[56] After Eusebio died, his five heirs became co-owners of his 347 square-meter portion. Dividing the 347 square meters among the five entitled each heir to 69.4 square meters of the land subject of litigation.

Consequently, the share of each co-owner did not exceed the 300 square meter limit set in R.A. 7279. The second question, however, is whether the subject property is the only real property of respondents for them to comply with the second requisite for small property owners.

Antonio Aguilar testified that he and most of the original co-owners do not reside on the subject property but in their ancestral

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[53] Exhibit "16", Records, p. 246.

[54] Exhibit "7", Records, p. 178.

[55] TSN of February 25, 1998, p. 22; TSN of June 17, 1998, pp. 6-7.

[56] *Cid v. Peralta*, 24 Phil. 142, 147-148 [1913]; also cited in Tolentino, *Civil Code*, Bk. II, pp. 162-163 [1992].

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home in Paco, Manila.[57] Respondents therefore appear to own real property other than the lots in litigation. Nonetheless, the records do not show that the ancestral home in Paco, Manila and the land on which it stands are owned by respondents or any one of them. Petitioner did not present any title or proof of this fact despite Antonio Aguilar's testimony.

On the other hand, respondents claim that the subject lots are their only real property[58] and that they, particularly two of the five heirs of Eusebio Aguilar, are merely renting their houses and therefore do not own any other real property in Metro Manila.[59] To prove this, they submitted certifications from the offices of the City and Municipal Assessors in Metro Manila attesting to the fact that they have no registered real property declared for taxation purposes in the respective cities. Respondents were certified by the City Assessor of Manila;[60] Quezon City;[61] Makati City;[62] Pasay City;[63] Parañaque;[64] Caloocan City;[65] Pasig City;[66] Muntinlupa;[67] Marikina;[68] and the then municipality of Las Piñas[69] and the municipality of San Juan del Monte[70] as

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[57] TSN of February 25, 1998, pp. 35-36.

[58] Exhibits "8", "8-e", and "8-f", Records, pp. 179, 184-185.

[59] Exhibits "8-ddd" and "8-eee", Records, pp. 235, 236.

[60] Exhibits "8-g", "8-h", "8-i" to "8-r", "8-fff", Records, pp. 186-196, 237.

[61] Exhibits "8-r" to "8-x", Records, pp. 197-203.

[62] Exhibit "8-y", Records, p. 204.

[63] Exhibits "8-z", "8-aa" to "8-ee", Records, pp. 205-210.

[64] Exhibit "8-zz", Records, p. 231.

[65] Exhibits "8-ff" to "8-kk", Records, pp. 211-216.

[66] Exhibit "8-b", Records, p. 181.

[67] Exhibit "8-rr", Records, p. 223.

[68] Exhibit "8-ss", Records, pp. 224.

[69] Exhibits "8-11" to "8-qq", Records, pp. 217-222.

[70] Exhibits "8-tt" to "8-yy", Records, pp. 225-230.

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having no real property registered for taxation in their individual names.

Finally, this court notes that the subject lots are now in the possession of respondents. Antonio Aguilar testified that he and the other co-owners filed ejectment cases against the occupants of the land before the Metropolitan Trial Court, Mandaluyong, Branches 59 and 60. Orders of eviction were issued and executed on September 17, 1997 which resulted in the eviction of the tenants and other occupants from the land in question.[71]

IN VIEW WHEREOF, the petition is *DENIED* and the orders dated September 17, 1998 and December 29, 1998 of the Regional Trial Court, Branch 168, Pasig City in SCA No. 1427 are *AFFIRMED*.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Kapunan, Pardo, and *Ynares-Santiago, JJ.*, concur.

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[71] TSN of February 25, 1998, pp. 20-21; Exhibits "5" and "6", Delivery Receipts of subject property, Records, pp. 176-177.