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flawed. It is the latter, not the appellate court, which could dismiss the case pending before that office. It also behooves courts of justice, if only for reasons of comity and convenience, to shy away from a dispute until the system of administrative redress is completed so as to give the administrative office every opportunity to correct its error and to properly dispose of the case. In fact, the appellate court's order to dismiss the appeal pending with the Office of the President could well constitute an undue intrusion into a valid exercise of jurisdiction by the President over acts of subordinates within that office.

WHEREFORE, the petition is *GRANTED*, and the assailed decision is *SET ASIDE*. No costs.

SO ORDERED.

Sandoval-Gutierrez, Corona and *Carpio Morales, JJ.*, concur.

FIRST DIVISION

[G.R. No. 157118. December 8, 2003]

THE ILOILO CITY ZONING BOARD OF ADJUSTMENT AND APPEALS and THE CITY GOVERNMENT OF ILOILO, represented by HON. CITY MAYOR JERRY P. TREÑAS, *petitioners, vs.* **GEGATO-ABECIA FUNERAL HOMES, INC., represented by its Attorney-In-Fact, DANIEL FAJARDO,** *respondent.*

SYNOPSIS

The City Council of Iloilo City enacted an ordinance for the prohibition of operations of funeral establishments at a minimum radial distance of at least 25 meters from restaurants, food centers and other food establishments. The Housing and Land Use regulatory Board (HLURB) duly ratified the said ordinance.

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The respondent herein applied with the City Zoning Board of Adjustments and Appeals (CZBAA) of Iloilo for the issuance of a permit to operate a funeral establishment located between a restaurant and a bakery, invoking exemption from the provision of the city ordinance since its business was without embalming facilities. The CZBAA of Iloilo denied respondent's application. Respondent filed an action for *mandamus* with the Regional Trial Court of Iloilo City. The trial court rendered a decision in favor of the respondent. Hence, petitioner filed this petition for review under Rule 45 of the Rules of Court based on the following legal issues: (1) whether or not respondent violated the rule on exhaustion of administrative remedies when it directly filed for *mandamus* before the RTC of Iloilo; and (2) whether or not the trial court erred in issuing a writ of *mandamus* directing the CZBAA of Iloilo to issue a permit to operate a funeral establishment.

The Supreme Court granted the petition herein. The order of the Regional Trial Court of Iloilo granting the issuance of a writ of *mandamus* directing the City Government of Iloilo to issue a permit to operate a funeral establishment in favor of respondent was reversed and set aside. According to the Court, the HLURB remained to be the appellate body to which decision and actions of local and regional planning and zoning bodies may be brought. Considering that the law provided for an administrative remedy of appeal to the HLURB from the decision of the CZBAA of Iloilo, and the respondent failed to exhaust the same, the petition for *mandamus* should have been dismissed by the trial court.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES AS A PRE-CONDITION FOR FILING AN ACTION; CONSTRUED.**— The settled rule is that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted

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first before the court's judicial power can be sought. The premature invocation of the court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or estoppel, the case is susceptible of dismissal for failure to state a cause of action. This doctrine of exhaustion of administrative remedies is not without practical and legal reasons, for one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; MAY NOT BE AVAILED OF TO DIRECT THE EXERCISE OF JUDGMENT OR DISCRETION IN A PARTICULAR WAY; PRESENT IN CASE AT BAR.**— Well-settled is the rule that *mandamus* may not be availed of to direct the exercise of judgment or discretion in a particular way, or to retract or reverse an action already taken in the exercise of either. In the present case, the trial court cannot substitute its judgment for that of the CZBAA of Iloilo by directing the latter to issue a permit to operate a funeral establishment in favor of respondent. All that the court can do is to see to it that the licensing authorities have proceeded according to law. Where an administrative body simply refuses to take any action whatsoever, the court may issue a writ of *mandamus* to compel it to take some action, but should not attempt to prescribe the action to be taken and thereby control the discretion or judgment of the board or officer.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; HOUSING AND LAND USE REGULATORY BOARD (HLURB); POWER TO ACT AS APPELLATE BODY OVER DECISIONS AND ACTIONS OF LOCAL AND REGIONAL PLANNING AND ZONING BODIES AND DEPUTIZED OFFICIAL OF THE BOARD WAS RETAINED AND REMAINED UNAFFECTED BY THE DEVOLUTION UNDER THE LOCAL GOVERNMENT CODE.**— Section 2 of E.O. No. 71, however, specifically states that [t]he HLURB shall retain such powers and functions not otherwise expressly provided herein or under

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existing laws." One of such powers not expressly withdrawn by E.O. No. 71 is the power of the HLURB to act as an appellate body to which decisions and actions of local and regional planning and zoning bodies may be brought (Section 5(f) of Executive Order No. 648). *Expression unius est exclussio alterius.* The express mention of one person, thing or consequence implies the exclusion of all others. Inasmuch as Section 1 of E.O. No. 71 does not include the appellate jurisdiction of the HLURB over decisions of local government units, it follows that said power was retained by it and not among those devolved to local government units. In fact, Section 4 of E.O. No. 71 affirms the power of the HLURB to review actions of local government units on the issuance of permits — SEC. 4. If in the course of evaluation of application for registration and licensing of projects within its jurisdiction, HLURB finds that a local government unit has overlooked or mistakenly applied a certain law, rule or standard in issuing a development permit, it shall suspend action with a corresponding advice to the local government concerned, so as to afford it an opportunity to take appropriate action thereon. Such return and advice must likewise be effected within a period of thirty (30) days from receipt by HLURB of the application. Moreover, Executive Order No. 72, series of 1993 (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), gives the HLURB the power to review and ratify land use plans of highly urbanized cities, like Iloilo City, *viz* — SEC. 2. x x x (e) Pursuant to LOI 729, S. of 1978, E.O. 648 S. of 1981, and RA No. 7279, the comprehensive land use plans of provinces, highly-urbanized cities and independent component cities shall be reviewed and ratified by the HLURB to ensure compliance with national standards and guidelines. Clearly therefore, what were devolved to local government units were only the powers and responsibilities specifically stated in Section 1 of E.O. No. 71, as well the authority of the HLURB to issue locational clearance for locally significant projects as provided in Section 3 of E.O. No. 72. The power to act as appellate body over decisions and actions of local and regional planning and zoning bodies and deputized official of the board was retained by the HLURB and remained unaffected by the devolution under the Local Government Code. Moreover, the fact that the Rules of Procedure of the HLURB does not categorically provide for

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a procedure on the remedy of appeal from decisions of local government units will not operate to divest the HLURB of the appellate jurisdiction specifically granted to it by law. It must be stressed that no rule or regulation may alter, amend, or contravene a provision of law. Implementing rules should conform, not clash, with the law that they implement.

APPEARANCES OF COUNSEL

The City Legal Office for petitioner.
Solis and Medina Law Offices for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is a petition for review under Rule 45 of the Rules of Court assailing the December 19, 2002 Order[1] of the Regional Trial Court of Iloilo City, Branch 29 in Civil Case No. 02-27308 which granted the issuance of a writ of *mandamus* directing the City Government of Iloilo to issue a permit to operate a funeral establishment in favor of respondent Gegato-Abecia Funeral Homes, Inc.

The undisputed facts show that on May 2, 2001, the City Council of Iloilo enacted Zoning Ordinance No. 2001-072[2] which was duly ratified by the Housing and Land Use Regulatory Board (HLURB). Section 41 (3)(d) of said ordinance provides, among others, for a prohibition to operate a funeral establishment at a minimum radial distance of at least 25 meters from restaurants, food centers and other food establishments, thus:

Section 41 3(d). Funeral Establishments shall be at a minimum radial distance from the following:

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[1] Issued by Judge Rene B. Hondrado; *Rollo*, p. 50.

[2] An Ordinance Establishing a Revised Comprehensive Zoning Regulation for the City of Iloilo, and Providing for the Administration, Enforcement and Amendment Thereof, and for the Repeal of All Ordinances in Conflict Therewith. (*Rollo*, p. 67)

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d.1 restaurants, food center and other food establishments — at least 25 meters.

d.2 markets — at least 50 meters.

d.3 abattoirs, schools and hospitals — at least 200 meters.[3]

Under the same ordinance, funeral establishments are classified and allowed to operate in certain areas, as follows:[4]

a) Funeral Establishments shall be classified as . . ..

a.1. Category I — funeral establishments with chapels, embalming facilities and offering funeral services.

Category II — funeral establishments with chapels and offering funeral services without embalming facilities; and

Category III — funeral establishments offering only funeral services from house of the deceased to the burial place.

b) Funeral establishments shall be allowed in the following zones:

Category I — C2 or an area within the city with quasi-trade business activities and services performing complementary/supplementary functions to principally commercial zone.

Category II — C1 or an area within the city principally for trade, services and business activities ordinarily referred to as Central Business District; C-2; and Institutional Zone.

Category III — C1; C2; and Institutional Zone.

On June 17, 2002, respondent applied with the City Zoning Board of Adjustments and Appeals (CZBAA) of Iloilo for the issuance of a permit to operate a funeral establishment on a 4-storey building located between a restaurant[5] and a bakery in the commercial zone of Iloilo City, classified as C2. Invoking Section 46 of the zoning ordinance which gives the CZBAA the

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[3] *Rollo*, p. 94.

[4] Ordinance No. 2001-072, Section 41 (3) Special Permit Uses (*Rollo*, pp. 93-94), in relation to Article III, Definition of Terms (*Rollo*, p. 73).

[5] Alleged to be non-functional.

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discretion to grant exceptions from the provisions thereof,[6] respondent contended that since its business is classified under Category II, *i.e.*, without embalming facilities, it should be excepted from the prohibition to operate a funeral establishment at a radial distance of less than 25 meters from food establishments.

In Resolution No. 7, dated June 25, 2002, the CZBAA of Iloilo denied respondent's application. Pertinent portion thereof reads:

WHEREAS, SECTION 47 sets the procedures for Granting of Exceptions and Variances, which is the specific issue raised by the applicant;

WHEREAS, the board took cognizance of existing HLURB Regulations, CLUP presentations on Flood-Prone Areas, the role of the Iloilo City Zoning Board of Adjustment and Appeals being a creation and implementor of the aforementioned ordinance;

WHEREAS, the said ordinance provides that Section 41.3(d) "Funeral establishments shall be at minimum radial distance from the following:

d.1. restaurants — at least 25 meters x x x" and shall conform with existing laws, rules and regulations, affecting the same;

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[6] Section 46. Deviation. The City Zoning Board of Adjustment and appeals (CZBAA) may allow exceptions, variances or deviations from the provisions of this Ordinance only when the following terms and conditions exist:

x x x x x x x x x

2. *Exceptions*

a) The exception will not adversely affect the public health, safety and welfare and is in keeping with the general pattern of development in the community.

b) The proposed project shall support economic based activities/provide livelihood, vital community services and facilities while at the same time posing no adverse effect on the zone/community.

c) The exception will not adversely affect the appropriate use of adjoining property in the same district.

d) The exception will not alter the essential character in (*sic*) general purpose of the district where the exception sought is located. (*Rollo*, pp. 96-97)

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NOW, THEREFORE, premises considered and on motion of Atty. Saturnino B. Gonzales, Jr., duly seconded by Mr. Florendo Besana and Atty. Mary Milagros A. Hechanova, resolve as it is hereby resolved to DENY the appeal of GEGATO-ABECIA Funeral Homes, Inc. for exception and for issuance of a Mayor's Permit to operate a funeral parlor at Brgy. Quintin Salas, Jaro, Iloilo City.

Unanimously APPROVED.[7]

Consequently, respondent filed a petition for *mandamus*[8] with the Regional Trial Court of Iloilo City, Branch 29 to compel the CZBAA of Iloilo to grant its prayer for exception and to issue the corresponding permit to operate a funeral establishment under Category II. Respondent claimed that Zoning Ordinance No. 2001-072 is unconstitutional insofar as it prohibits the operation of funeral establishments without embalming facilities (Category II) within a radial distance of less than 25 meters from food establishments; and assuming that the ordinance is valid, the CZBAA gravely abused its discretion in outrightly denying the application.

In its Answer,[9] the CZBAA of Iloilo averred that respondent violated the rule on exhaustion of administrative remedies as it failed to appeal the decision to the HLURB as mandated by Section 56(C) of Zoning Ordinance No. 2001-072. It further averred that the exception prayed for cannot be granted because the 25 meter radial distance rule which was in fact copied from the Internal Rules and Regulations of the HLURB on applications for funeral establishments,[10] applies to all categories of funeral establishments, including those without embalming facilities.

On December 19, 2002, the trial court rendered a decision in favor of respondent. It did not pass upon the constitutionality of the zoning ordinance but nevertheless ruled that the CZBAA of Iloilo gravely abused its discretion in denying the application

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[7] *Rollo*, p. 103.

[8] *Rollo*, p. 235.

[9] *Rollo*, p. 252.

[10] Rule III, Design Standard and Requirements, Section 4 (A1.3).

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without giving respondent an opportunity to prove that its application is meritorious. The court *a quo* further held that respondent's resort to judicial remedy is correct because under the Local Government Code, the power to act on pending applications for locational clearance is now vested with local government units and no longer with the HLURB per resolution of the latter dated July 19, 2002. It thus proceeded to assess the merits of respondent's appeal for exception and thereafter issued the writ of mandamus prayed for. The dispositive portion of the assailed order, states:

> WHEREFORE, premises considered, and finding the prayer for *Mandamus* to be impressed with merit, a Writ of *Mandamus* is hereby issued against the respondents directing them to grant the appeal for exception and to issue the corresponding Mayor's Permit for the Gegato-Abecia Funeral Homes, Inc. to operate a funeral establishment under Category II of the City Zoning Ordinance in the building standing on the property of petitioner along the Highway of Barangay Quintin Salas, Jaro, Iloilo City.
>
> SO ORDERED.[11]

A motion for reconsideration thereof was denied on February 12, 2003.[12]

Hence, petitioners filed the instant petition based on the following legal issues: (1) whether or not respondent violated the rule on exhaustion of administrative remedies; and (2) whether or not the trial court erred in issuing a writ of *mandamus* directing the CZBAA of Iloilo to issue a permit to operate a funeral establishment.

The settled rule is that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes

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[11] *Rollo*, p. 53.

[12] *Rollo*, p. 54.

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within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or estoppel, the case is susceptible of dismissal for failure to state a cause of action. This doctrine of exhaustion of administrative remedies is not without practical and legal reasons, for one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case.[13]

In *Systems Plus Computer College of Caloocan City v. Local Government of Caloocan City*,[14] the Court affirmed the dismissal of a petition for mandamus to compel the City of Caloocan to classify certain parcels of land as actually, directly and exclusively used for educational purposes and to grant the corresponding tax exemption. It ruled that petitioner cannot in the guise of raising pure question of law, seek judicial intervention without exhausting the available administrative remedies, thus —

> Petitioner also argues that it is seeking to enforce, through the petition for *mandamus*, a clear legal right under the Constitution and the pertinent provisions of the Local Government Code granting tax exemption on properties actually, directly and exclusively used for educational purposes. But petitioner is taking an unwarranted shortcut. The argument gratuitously presumes the existence of the fact which it must first prove by competent and sufficient evidence before the City Assessor. It must be stressed that the authority to receive evidence, as basis for classification of properties for taxation, is legally vested on the respondent City Assessor whose action is

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[13] *Paat v. Court of Appeals*, 334 Phil. 146, 152-153 (1997).

[14] G.R. No, 146382, 7 August 2003, citing *Lopez v. City of Manila*, 363 Phil. 68 (1999); *Zabat v. Court of Appeals*, G.R. No. 122089, 23 August 2000, 338 SCRA 551, 560.

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appealable to the Local Board of Assessment Appeals and the Central Board of Assessment Appeals, if necessary.

The petitioner cannot bypass the authority of the concerned administrative agencies and directly seek redress from the courts even on the pretext of raising a supposedly pure question of law without violating the doctrine of exhaustion of administrative remedies. Hence, when the law provides for remedies against the action of an administrative board, body, or officer, as in the case at bar, relief to the courts can be made only after exhausting all remedies provided therein. Otherwise stated, before seeking the intervention of the courts, it is a precondition that petitioner should first avail of all the means afforded by the administrative processes.[15]

In the case at bar, respondent failed to exhaust the available administrative remedies before seeking judicial intervention *via* a petition for *mandamus*. Section 55C of Zoning Ordinance No. 2001-072, which was duly reviewed and ratified by the Housing and Land Use Regulatory Board, categorically provides that "[d]ecisions of the Local Zoning Board of Adjustment and Appeals shall be appealable to the HLURB."

Under Section 5 of Executive Order No. 648, series of 1981,[16] the Human Settlements Regulatory Commission (HSRC) later renamed as Housing and Land Use Regulatory Board (HLURB), pursuant to Section 1 (c) of Executive Order No. 90, series of 1986,[17] has the power to:

a) Promulgate zoning and other land use control standards and guidelines which shall govern land use plans and zoning ordinances of local governments; . . .

b) Review, evaluate and approve or disapprove comprehensive land use development plans and zoning ordinances of local government[s]; . . .

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[15] *Id.*

[16] Took effect on February 7, 1981 (See United *Housing Corporation v. Dayrit*, G.R. No. 76422, 22 January 1990, 181 SCRA 285, 291).

[17] *Realty Exchange Venture Corporation v. Sendino*, G.R. No. 109703, 5 July 1994, 233 SCRA 665, 672.

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x x x x x x x x x

f) *Act as the appellate body on decisions and actions of local and regional planning and zoning bodies and of the deputized officials of the Commission, on matters arising from the performance of these functions.*

On March 23, 1993, then President Fidel V. Ramos issued Executive Order No. 71 devolving the power of the HLURB to approve subdivision plans to cities and municipalities pursuant to the Local Government Code. Section 1 thereof reads:

SECTION 1. — Cities and municipalities shall heretofore assume the powers of the Housing and Land Use Regulatory Board (HLURB) over the following:

(a) Approval of preliminary as well as final subdivision schemes and development plans of all subdivisions, residential, commercial, industrial and for other purposes of the public and private sectors, in accordance with the provisions of P.D. No. 957 as amended and its implementing standards, rules and regulations concerning approval of subdivision plans;[18]

(b) Approval of preliminary and final subdivision schemes and development plans of all economic and socialized housing projects as well as individual or group building and occupancy permits covered by BP 220 and its implementing standards, rules and regulations;

c) Evaluation and resolution of opposition against the issuance of development permits for any of the said projects, in accordance with the said laws and the Rules of Procedure promulgated by the HLURB incident thereto;

d) Monitoring the nature and progress of land development projects it has approved, as well as housing construction in the case of house and lot packages, to ensure their faithfulness to the approved plans and specifications thereof, and, imposition of appropriate measures to enforce compliance therewith;

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[18] See Section 468 of the Local Government Code; Powers, Duties, Functions . . . of the *Sangguniang Panlalawigan*;

(2)vii. Review the comprehensive land use plans and zoning ordinances of component cities and municipalities and adopt a comprehensive provincial land use plans, subject to existing laws;

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In the exercise of such responsibilities, the city or municipality concerned shall be guided by the work program approved by the Board upon evaluation of the developer's financial, technical and administrative capabilities;

Moreover, the city or municipality concerned may call on the Board for assistance in the imposition of administrative sanctions and the Department of Justice (DOJ) in the institution of the criminal proceedings against violators;

(e) Assessment and collection of fees incident to the foregoing.

Section 2 of E.O. No. 71, however, specifically states that "*[t]he HLURB shall retain such powers and functions not otherwise expressly provided herein or under existing laws.*" One of such powers not expressly withdrawn by E.O. No. 71 is the power of the HLURB to act as an appellate body to which decisions and actions of local and regional planning and zoning bodies may be brought (Section 5(f) of Executive Order No. 648). *Expressio unius est exclussio alterius*. The express mention of one person, thing or consequence implies the exclusion of all others. Inasmuch as Section 1 of E.O. No. 71 does not include the appellate jurisdiction of the HLURB over decisions of local government units, it follows that said power was retained by it and not among those devolved to local government units. In fact, Section 4 of E.O. No. 71 affirms the power of the HLURB to review actions of local government units on the issuance of permits —

SEC. 4. — If in the course of evaluation of application for registration and licensing of projects within its jurisdiction, HLURB finds that a local government unit has overlooked or mistakenly applied a certain law, rule or standard in issuing a development permit, it shall suspend action with a corresponding advice to the local government concerned, so as to afford it an opportunity to take appropriate action thereon. Such return and advice must likewise be effected within a period of thirty (30) days from receipt by HLURB of the application.

Moreover, Executive Order No. 72, series of 1993 (Providing for the Preparation and Implementation of the Comprehensive Land Use Plans of Local Government Units Pursuant to the

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Local Government Code of 1991 and other Pertinent Laws), gives the HLURB the power to review and ratify land use plans of highly urbanized cities, like Iloilo City,[19] viz —

> SEC. 2. x x x.
>
> (e) Pursuant to LOI 729, S. of 1978, E.O. 648 S. of 1981, and RA No. 7279, the comprehensive land use plans of provinces, highly-urbanized cities and independent component cities shall be reviewed and ratified by the HLURB to ensure compliance with national standards and guidelines.

Respondent cannot rely on the July 19, 2002 Order of the HLURB which declined to assume jurisdiction over respondent's application for a locational clearance to operate a funeral home. It appears from the record that respondent filed his application for the issuance of a permit with the HLURB before it filed a similar application with the CZBAA of Iloilo. In indorsing the application to the latter, the HLURB ratiocinated as follows:

> Considering that Iloilo City has already updated its Comprehensive Land Use Plan and the same was approved and ratified by the Board on March 14, 2001, authority to issue Locational Clearance is now vested in the city government pursuant to Executive Order No. 71, Series of 1986, implementing Section 20 and other related provisions of the Local Government Code of 1991. In view thereof, the Board is divested of the power to act on pending applications therefore.
>
> WHEREFORE, let the records of this case be indorsed to the Zoning Administrator of the City or the body/official performing the equivalent function for its proper disposition.
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> SO ORDERED.[20]

We note that the HLURB's refusal to act on the application was not based on the absence of appellate jurisdiction, but on lack of authority to issue locational clearances. The HLURB correctly indorsed the application to the zoning administrator

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[19] In *Executive Judge Astorga v. Solas*, 413 Phil. 558, 562 (2001), the Court took judicial notice that Iloilo City is a highly urbanized city.

[20] *Rollo*, p. 189.

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of the city because the power to *issue* permits and locational clearances for locally significant projects is now lodged with the city/municipality with a comprehensive land use plan. This is in accordance with Executive Order No. 72, which was issued to delineate the powers and responsibilities of local government units and the HLURB in the preparation and implementation of comprehensive land use plans under a decentralized framework of local governance.[21] Section 3 of Executive Order No. 72, provides:

> SEC 3. *Plan implementation.* — (a) The authority of the HLURB to *issue locational clearance for locally significant projects* is hereby devolved to cities and municipalities with comprehensive land use plans reviewed and approved in accordance with this Order. Such cities and municipalities shall likewise be responsible for the institution of other actions in the enforcement of the provisions thereof. For this purpose, they may call on the HLURB and such other NGAs for any legal and technical assistance.

The power of the HLURB to issue locational clearance is now limited to projects considered to be of vital and national or regional economic or environmental significance. Second paragraph of Section 3 of Executive Order No. 72, further states that —

> Based on established national standards and priorities, the HLURB shall continue to issue locational clearances for *projects considered to be of vital and national or regional economic or environmental significance*. Unless otherwise declared by the NEDA Board, all projects shall be presumed locally significant.

Clearly therefore, what were devolved to local government units were only the powers and responsibilities specifically stated in Section 1 of E.O. No. 71, as well the authority of the HLURB to issue locational clearance for locally significant projects as provided in Section 3 of E.O. No. 72. The power to act as appellate body over decisions and actions of local and regional planning and zoning bodies and deputized official

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[21] Sixth whereas clause of Executive Order No. 72.

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of the board was retained by the HLURB and remained unaffected by the devolution under the Local Government Code.

Moreover, the fact that the Rules of Procedure of the HLURB[22] does not categorically provide for a procedure on the remedy of appeal from decisions of local government units will not operate to divest the HLURB of the appellate jurisdiction specifically granted to it by law. It must be stressed that no rule or regulation may alter, amend, or contravene a provision of law. Implementing rules should conform, not clash, with the law that they implement.[23]

Indeed, it would be in consonance with orderly procedure to provide an administrative sifting process of matters peculiarly within the competence of administrative agencies. Being the agency mandated to adopt standards and guidelines for land use plans and zoning ordinances of local government units, the HLURB is presumed to have the necessary knowledge and expertise on matters specifically patterned after its rules and is therefore in a better position to pass judgment thereon. Moreover, such administrative process would not only save the parties the expenses and tedious litigation but will also prevent clogging of dockets in court.[24]

Considering that the law provides for an administrative remedy of appeal to the HLURB from decisions of the CZBAA of Iloilo, and that respondent failed to exhaust the same, the petition for mandamus should have been dismissed by the trial court.

Furthermore, the issuance of a permit to operate a funeral establishment and the grant of exception from the zoning ordinances is a discretionary act of the CZBAA of Iloilo. Well-

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[22] 1996 Rules of Procedure of the HLURB as amended by Board Commissioners Resolution No. R-655, Series of 1999.

[23] *Bank of the Philippine Island v. Court of Appeals*, G.R. No. 102383, 26 November 1992, 216 SCRA 51, 64; citing *Shell Philippines, Inc. v. Central Bank of the Philippines*, G.R. No. L-51353, 27 June 1988, 162 SCRA 628.

[24] Martin and Martin, *Administrative Law, Law of Public Officers and Election Law*, 1983 Edition, p. 52.

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settled is the rule that *mandamus* may not be availed of to direct the exercise of judgment or discretion in a particular way, or to retract or reverse an action already taken in the exercise of either.[25] In the present case, the trial court cannot substitute its judgment for that of the CZBAA of Iloilo by directing the latter to issue a permit to operate a funeral establishment in favor of respondent. All that the court can do is to see to it that the licensing authorities have proceeded according to law. Where an administrative body simply refuses to take any action whatsoever, the court may issue a writ of *mandamus* to compel it to take some action, but should not attempt to prescribe the action to be taken and thereby control the discretion or judgment of the board or officer.[26]

WHEREFORE, in view of all the foregoing, the petition is *GRANTED*. The December 19, 2002 Order of the Regional Trial Court of Iloilo City, Branch 29, which granted the issuance of a writ of mandamus directing the City Government of Iloilo to issue a permit to operate a funeral establishment in favor of respondent is *REVERSED* and *SET ASIDE*. The petition for *mandamus* filed by respondent in Civil Case No. 02-27308 is ordered *DISMISSED*.

SO ORDERED.

Davide, Jr., C.J., Panganiban, Carpio and *Azcuna, JJ.*, concur.

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[25] *Angchangco, Jr. v. Hon. Ombudsman*, 335 Phil. 766, 771-772 (1997), citing Martin, *Rules of Court in the Philippines*, Vol. III, 4th Edition, p. 233.

[26] *Policarpio v. Philippine Veterans Board*; 99 Phil. 797, 799 (1956).