

G.R. No. 225973 - *SATURNINO C. OCAMPO, ET AL. v. REAR ADMIRAL ERNESTO C. ENRIQUEZ, ET AL.*;

G.R. No. 225984 - *REP. EDCEL C. LAGMAN, ET AL. v. EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, ET AL.*;

G.R. No. 226097 - *LORETTA ANN PARGAS-ROSALES, ET AL. v. EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, ET AL.*;

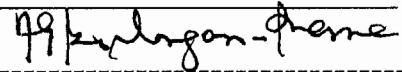
G.R. No. 226116 - *HEHERSON T. ALVAREZ, ET AL. v. EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, ET AL.*;

G.R. No. 226117 - *ZAIRA PATRICIA B. BANIAGA, ET AL. v. SECRETARY OF NATIONAL DEFENSE DELFIN N. LORENZANA, ET AL.*;

G.R. No. 226120 - *ALGAMAR A. LATIPH, ET AL. v. SECRETARY DELFIN N. LORENZANA, sued in his capacity as SECRETARY OF NATIONAL DEFENSE, ET AL.*

Promulgated:

November 8, 2016



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CONCURRING OPINION

BERSAMIN, J.:

These consolidated special civil actions (variously seeking the writs of *certiorari*, *mandamus* and prohibition)¹ concern the question of whether or not the Chief Executive, in verbally authorizing the interment of the remains of the late President Ferdinand E. Marcos in the Libingan ng mga Bayani (LNMB), gravely abused his discretion.

I **CONCUR** with the **MAIN OPINION** so eruditely penned for the Majority by Justice Diosdado M. Peralta. I hereby only express my reasons for voting to dismiss the petitions, and thus to allow the interment to proceed.

¹ G.R. No. 225973, G.R. No. 226117, and G.R. No. 226120 are petitions for *certiorari* and prohibition; G.R. No. 225984 and G.R. No. 226097 are petitions for prohibition; and G.R. No. 226116 prays for the issuance of the writs of *mandamus* and prohibition.

President Rodrigo Roa Duterte was sworn to office and assumed the Presidency at noontime of June 30, 2016. In his campaign for the Presidency, he had promised, among others, that if elected he would authorize the interment of the remains of the late President Marcos in the LNMB. To deliver on this promise, he verbally directed Secretary Delfin N. Lorenzana of the Department of National Defense (DND) on July 11, 2016 to prepare the groundwork for the interment. Secretary Lorenzana thus issued on August 7, 2016 the assailed Memorandum directing General Ricardo R. Visaya, Chief of Staff of the Armed Forces of the Philippines (AFP), to “kindly undertake the necessary planning and preparations to facilitate the coordination of all agencies concerned specially the provisions for ceremonial and security requirements” for the interment, and to “[c]oordinate closely with the Marcos family regarding the date of interment and the transport of the late former President’s remains from Ilocos Norte to the LNMB.” In turn, General Visaya commanded Deputy Chief of Staff of the AFP Rear Admiral Ernesto C. Enriquez to implement the Memorandum, and this Rear Admiral Enriquez did by transmitting on August 9, 2016 his own directive to the Commanding General of the Philippine Army to proceed with the interment and to provide “all necessary military honors accorded for a President.”

These events expectedly invited protests from various sectors. The petitioners herein then initiated these consolidated special civil actions in this Court to advance a common cause – to prevent the interment of the remains of President Marcos in LNMB because of the many human rights violations committed during his long regime that included the period when he placed the whole country under Martial Law. They mainly insisted that interring the remains of President Marcos in the LNMB would desecrate the shrine that was intended only for heroes.

The following should explain my vote.

First of all, the foregoing antecedents render it quite evident to me that the interment of the remains of President Marcos in the LMNB is a matter that exclusively pertains to the discretion of President Duterte as the Chief Executive. The character of the LMNB as the resting place for the war dead and other military personnel under the care and control of the AFP has placed the LMNB under the control of the President. Plainly enough, the President thereby exercised such control through the AFP Chief of Staff.

In the context of the LNMB being a military facility, the AFP has issued AFP Regulations G 161-375 to prescribe guidelines that enumerate the persons whose remains may be interred therein, to wit:

- a. Medal of Valor Awardees
- b. Presidents or Commander-in-Chief, AFP
- c. Secretaries of National Defense
- d. Chiefs of Staff, AFP
- e. Generals/Flag Officers of the AFP
- f. Active and retired military personnel of the AFP to include active draftees and trainees who died in the line of duty, active reservists and CAFGU Active Auxillary (CAA) who died in combat operations or combat related activities.
- g. Former members of the AFP who laterally entered or joined the Philippine Coast Guard (PCG) and the Philippine National Police (PNP).
- h. Veterans of Philippine Revolution of 1890, WWI, WWII, and recognized guerillas.
- i. Government Dignitaries, Statesmen, National Artists and other deceased persons whose interment or reinternment has been approved by the Commander-in-Chief, Congress or the Secretary of National Defense.
- j. Former Presidents, Secretaries of Defense, Dignitaries, Statesmen, National Artists, widows of Former Presidents, Secretaries of National Defense and Chief of Staff are authorized to be interred at the LNMB.

Based on the foregoing, the exercise by President Duterte of his discretion upon a matter under his control like the interment of the remains of President Marcos in the LNMB is beyond review by the Court. He has not thereby transgressed any legal boundaries. President Marcos – being a former President of the Philippines, a Medal of Valor awardee, a veteran of World War II, a former Senator and Senate President, and a former Congressman – is one of those whose remains are *entitled* to be interred in the LNMB under the terms of AFP Regulations G 161-375. President Duterte was far from whimsical or arbitrary in his exercise of discretion. I believe that interment of any remains in the LNMB is a political question within the exclusive domain of the Chief Executive. The Court must defer to his wisdom and must respect his exercise of discretion. In other words, his directive to Secretary Lorenzana is unassailable.

I must observe that the factual milieu in these cases is different from that in the case in which the Court addressed and decided the question of whether or not the President of the Philippines had validly acted in prohibiting the return of the family of President Marcos to the country. In the latter case, the Court ruled that when political questions were involved, the Constitution limited the determination to whether or not grave abuse of

discretion amounting lack or excess of jurisdiction was committed by the respondent public official.² The foremost consideration then was that the return of the Marcoses could dangerously impact on the nation's peace and security. That impact is not imminent today.

Secondly, the several laws the petitioner have invoked to prevent the interment are not relevant to the LNMB. The main opinion fully explains why this is so. I agree.

For instance, Republic Act No. 289, which all the petitioners except the petitioners in G.R. No. 226120 rely upon, stipulated the establishment of the National Pantheon as the final resting place for former Presidents of the Philippines, national heroes and patriots to perpetuate their memory as sources of inspiration and emulation for the future generations. On the basis of this law, the petitioners concerned quickly assert that the remains of the late President Marcos do not deserve to be interred in the LNMB because his gross human rights violations, massive corruption and plunder of the government coffers, and other abuses during his regime rendered his memory unworthy of perpetuation and because he could not be a source of inspiration and emulation for future generations. Yet, the Solicitor General has clarified that the LNMB is not the National Pantheon referred to by Republic Act No. 289. Indeed, Proclamation No. 431 (*Reserving as Site for the Construction of the National Pantheon a Certain Parcel of Land Situated in Quezon City*) would locate the National Pantheon in East Avenue, Quezon City, but the establishment of the National Pantheon was later on discontinued. In contrast, the LNMB is the former Republic Memorial Cemetery as expressly provided in Executive Order No. 77 (*Transferring the Remains of War Dead Interred at Bataan Memorial Cemetery, Bataan Province and at the Other Places in the Philippines to the Republic Memorial Cemetery at Port WM McKinley, Rizal Province*). The Republic Memorial Cemetery was reserved as the final resting place for the war dead of World War II, but President Magsaysay renamed it to LNMB on October 27, 1954. The history of the LNMB refutes the petitioners' reliance on Republic Act No. 289. Verily, the LNMB is not the same as the National Pantheon.

Republic Act No. 10368 has also been cited by the petitioners. This law recognizes the victims of Martial Law and makes reparations for their sufferings by appropriating ₱10,000,000,000.00 as compensation for them. How such law impacts on the interment of the remains of President Marcos has not been persuasively shown.

² *Marcos v. Manglapus*, G.R. No. 88211 September 15, 1989, 177 SCRA 668, 696.

The petitioners have not laid out any legal foundation for directly testing the issuance of the challenged executive issuances. They have not cited any specific provision of either the Constitution or other existing laws that would expressly prohibit the interment in the LNMB of the remains of one like President Marcos.

And, thirdly, AFP Regulations G 161-375 lists those who are disqualified to have their remains interred in the LNMB, to wit:

- a. Personnel who were dishonorably separated/reverted/discharged from the service.
- b. Authorized personnel who were convicted by final judgment of an offense involving moral turpitude.

None of the disqualifications can apply to the late President Marcos. He had not been dishonorably separated or discharged from military service, or convicted by final judgment of any offense involving moral turpitude. The contention that he had been ousted from the Presidency by the 1986 People Power revolution was not the same as being dishonorably discharged because the discharge must be from the military service. In contrast, and at the risk of being redundant, I remind that he had been a two-term President of the Philippines, a Medal of Valor awardee, a veteran of World War II, a former Senator and Senate President, and a former Congressman, by any of which he was qualified to have his remains be interred in the LNMB.


LUCAS P. BERSAMIN
Associate Justice