

**EN BANC**

**[ G.R. Nos. 152613 & 152628, November 20, 2009 ]**

**APEX MINING CO., INC., PETITIONER, VS. SOUTHEAST MINDANAO GOLD MINING CORP., THE MINES ADJUDICATION BOARD, PROVINCIAL MINING REGULATORY BOARD (PMRB-DAVAO), MONKAYO INTEGRATED SMALL SCALE MINERS ASSOCIATION, INC., ROSENDO VILLAFLORES, BALITE COMMUNAL PORTAL MINING COOPERATIVE, DAVAO UNITED MINERS COOPERATIVE, ANTONIO DACUDAO, PUTING-BATO GOLD MINERS COOPERATIVE, ROMEO ALTAMERA, THELMA CATAPANG, LUIS GALANG, RENATO BASMILLO, FRANCISCO YOBIDO, EDUARDO GLORIA, EDWIN ASION, MACARIO HERNANDEZ, REYNALDO CARUBIO, ROBERTO BUNIALES, RUDY ESPORTONO, ROMEO CASTILLO, JOSE REA, GIL GANADO, PRIMITIVA LICAYAN, LETICIA ALQUEZA AND JOEL BRILLANTES MANAGEMENT MINING CORPORATION, RESPONDENTS.**

**[G.R. NO. 152619-20]**

**BALITE COMMUNAL PORTAL MINING COOPERATIVE, PETITIONER, VS. SOUTHEAST MINDANAO GOLD MINING CORP., APEX MINING CO., INC., THE MINES ADJUDICATION BOARD, PROVINCIAL MINING REGULATORY BOARD (PMRB-DAVAO), MONKAYO INTEGRATED SMALL SCALE MINERS ASSOCIATION, INC., ROSENDO VILLAFLORES, DAVAO UNITED MINERS COOPERATIVE, ANTONIO DACUDAO, PUTING-BATO GOLD MINERS COOPERATIVE, ROMEO ALTAMERA, THELMA CATAPANG, LUIS GALANG, RENATO BASMILLO, FRANCISCO YOBIDO, EDUARDO GLORIA, EDWIN ASION, MACARIO HERNANDEZ, REYNALDO CARUBIO, ROBERTO BUNIALES, RUDY ESPORTONO, ROMEO CASTILLO, JOSE REA, GIL GANADO, PRIMITIVA LICAYAN, LETICIA ALQUEZA AND JOEL BRILLANTES MANAGEMENT MINING CORPORATION, RESPONDENTS.**

**[G.R. NO. 152870-71]**

**THE MINES ADJUDICATION BOARD AND ITS MEMBERS, THE HON. VICTOR O. RAMOS (CHAIRMAN), UNDERSECRETARY VIRGILIO MARCELO (MEMBER) AND DIRECTOR HORACIO RAMOS (MEMBER), PETITIONERS, VS. SOUTHEAST MINDANAO GOLD MINING CORPORATION, RESPONDENT.**

**R E S O L U T I O N**

**CHICO-NAZARIO, J.:**

This resolves the motion for reconsideration dated 12 July 2006, filed by Southeast Mindanao Gold Mining Corporation (SEM), of this Court's Decision dated 23 June 2006 (Assailed Decision). The Assailed Decision held that the assignment of Exploration Permit (EP) 133 in favor of SEM violated one of the conditions stipulated in the permit, *i.e.*, that the same shall be for the exclusive use and benefit of Marcopper Mining Corporation (MMC) or its duly authorized agents. Since SEM did not claim or submit evidence that it was a designated agent of MMC, the latter cannot be considered as an agent of the former that can use EP 133 and benefit from it. It also ruled that the transfer of EP 133 violated Presidential Decree No. 463, which requires that the assignment of a mining right be made with the prior approval of the Secretary of the Department of Environment and Natural Resources (DENR). Moreover, the Assailed Decision pointed out that EP 133 expired by non-renewal since it was not renewed before or after its expiration.

The Assailed Decision likewise upheld the validity of Proclamation No. 297 absent any question against its validity. In view of this, and considering that under Section 5 of Republic Act No. 7942, otherwise known as the "Mining Act of 1995," mining operations in mineral reservations may be undertaken directly by the State or through a contractor, the Court deemed the issue of ownership of priority right over the contested Diwalwal Gold Rush Area as having been overtaken by the said proclamation. Thus, it was held in the Assailed Decision that it is now within the prerogative of the Executive Department to undertake directly the mining operations of the disputed area or to award the operations to private entities including petitioners Apex and Balite, subject to applicable laws, rules and regulations, and provided that these private entities are qualified.

SEM also filed a Motion for Referral of Case to the Court *En Banc* and for Oral Arguments dated 22 August 2006.

Apex, for its part, filed a Motion for Clarification of the Assailed Decision, praying that the Court elucidate on the Decision's pronouncement that "mining operations, are now, therefore within the full control of the State through the executive branch." Moreover, Apex asks this Court to order the Mines and Geosciences Board (MGB) to accept its application for an exploration permit.

In its Manifestation and Motion dated 28 July 2006, Balite echoes the same concern as that of Apex on the actual takeover by the State of the mining industry in the disputed area to the exclusion of the private sector. In addition, Balite prays for this Court to direct MGB to accept its application for an exploration permit.

Camilo Banad, *et al.*, likewise filed a motion for reconsideration and prayed that the disputed area be awarded to them.

In the Resolution dated 15 April 2008, the Court *En Banc* resolved to accept the instant cases. The Court, in a resolution dated 29 April 2008, resolved to set the cases for Oral Argument on 1 July 2008.

During the Oral Argument, the Court identified the following principal issues to be discussed by the parties:

1. *Whether the transfer or assignment of Exploration Permit (EP) 133 by MMC to SEM was validly made without violating any of the terms and conditions set*

forth in Presidential Decree No. 463 and EP 133 itself.

2. Whether Southeast Mindanao Mining Corp. acquired a vested right over the disputed area, which constitutes a property right protected by the Constitution.

3. Whether the assailed Decision dated 23 June 2006 of the Third Division in this case is contrary to and overturns the earlier Decision of this Court in *Apex v. Garcia* (G.R. No. 92605, 16 July 1991, 199 SCRA 278).

4. Whether the issuance of Proclamation No. 297 declaring the disputed area as mineral reservation outweighs the claims of SEM, Apex Mining Co. Inc. and Balite Communal Portal Mining Cooperative over the Diwalwal Gold Rush Area.

5. Whether the issue of the legality/constitutionality of Proclamation No. 297 was belatedly raised.

6. Assuming that the legality/constitutionality of Proclamation No. 297 was timely raised, whether said proclamation violates any of the following:

- a. Article XII, Section 4 of the Constitution;
- b. Section 1 of Republic Act No. 3092;
- c. Section 14 of the Administrative Code of 1987;
- d. Section 5(a) of Republic Act No. 7586;
- e. Section 4(a) of Republic Act No. 6657; and
- f. Section 2, Subsection 2.1.2 of Executive Order No. 318 dated 9 June 2004.

After hearing the arguments of the parties, the Court required them to submit their respective memoranda. Memoranda were accordingly filed by SEM, Apex, Balite and Mines Adjudication Board (MAB).

We shall resolve the second issue before dwelling on the first, third and the rest of the issues.

### **MMC or SEM Did Not Have Vested Rights Over the Diwalwal Gold Rush Area**

Petitioner SEM vigorously argues that *Apex Mining Co., Inc. v. Garcia*<sup>[1]</sup> vested in MMC mining rights over the disputed area. It claims that the mining rights that MMC acquired under the said case were the ones assigned to SEM, and not the right to explore under MMC's EP 133. It insists that mining rights, once obtained, continue to subsist regardless of the validity of the exploration permit; thus, mining rights are independent of the exploration permit and therefore do not expire with the permit. SEM insists that a mining right is a vested property right that not even the government can take away. To support this thesis, SEM cites this Court's ruling in *McDaniel v. Apacible and Cuisia*<sup>[2]</sup> and in *Gold Creek Mining Corporation v. Rodriguez*,<sup>[3]</sup> which were decided in 1922 and 1938, respectively.

*McDaniel* and *Gold Creek Mining Corporation* are not in point.

In 1916, *McDaniel*, petitioner therein, located minerals, *i.e.*, petroleum, on an unoccupied public land and registered his mineral claims with the office of the mining recorder pursuant to the Philippine Bill of 1902, where a mining claim locator, soon after locating the mine, enjoyed possessory rights with respect to such mining claim with or without a patent therefor. In that case, the Agriculture Secretary, by virtue of Act No. 2932, approved in 1920, which provides that "all public lands may be leased by the then Secretary of Agriculture and Natural Resources," was about to grant the application for lease of therein respondent, overlapping the mining claims of the subject petitioner. Petitioner argued that, being a valid locator, he had vested right over the public land where his mining claims were located. There, the Court ruled that the mining claim perfected under the Philippine Bill of 1902, is "property in the highest sense of that term, which may be sold and conveyed, and will pass by descent, and is not therefore subject to the disposal of the Government." The Court then declared that since petitioner had already perfected his mining claim under the Philippine Bill of 1902, a subsequent statute, *i.e.*, Act No. 2932, could not operate to deprive him of his already perfected mining claim, without violating his property right.

*Gold Creek Mining* reiterated the ruling in *McDaniel* that a perfected mining claim under the Philippine Bill of 1902 no longer formed part of the public domain; hence, such mining claim does not come within the prohibition against the alienation of natural resources under Section 1, Article XII of the 1935 Constitution.

Gleaned from the ruling on the foregoing cases is that for this law to apply, it must be established that the mining claim must have been perfected when the Philippine Bill of 1902 was still in force and effect. This is so because, unlike the subsequent laws that prohibit the alienation of mining lands, the Philippine Bill of 1902 sanctioned the alienation of mining lands to private individuals. The Philippine Bill of 1902 contained provisions for, among many other things, the open and free exploration, occupation and purchase of mineral deposits and the land where they may be found. It declared **"all valuable mineral deposits in public lands in the Philippine Islands, both surveyed and unsurveyed x x x to be free and open to exploration, occupation, and purchase, and the land in which they are found to occupation and purchase, by citizens of the United States, or of said Islands x x x."**<sup>[4]</sup> Pursuant to this law, the holder of the mineral claim is entitled to all the minerals that may lie within his claim, provided he does three acts: First, he enters the mining land and locates a plot of ground measuring, where possible, but not exceeding, one thousand feet in length by one thousand feet in breadth, in as nearly a rectangular form as possible.<sup>[5]</sup> Second, the mining locator has to record the mineral claim in the mining recorder within thirty (30) days after the location thereof.<sup>[6]</sup> Lastly, he must comply with the annual actual work requirement.<sup>[7]</sup> Complete mining rights, namely, the rights to explore, develop and utilize, are acquired by a mining locator by simply following the foregoing requirements.

With the effectivity of the 1935 Constitution, where the *regalian* doctrine was adopted, it was declared that all natural resources of the Philippines, including mineral lands and minerals, were property belonging to the State.<sup>[8]</sup> Excluded, however, from the property of public domain were the mineral lands and minerals that were located and perfected by virtue of the Philippine Bill of 1902, since they were already considered private properties of the locators.<sup>[9]</sup>

Commonwealth Act No. 137 or the Mining Act of 1936, which expressly adopted the *regalian* doctrine following the provision of the 1935 Constitution, also proscribed the alienation of mining lands and granted only lease rights to mining claimants, who were prohibited from purchasing the mining claim itself.

When Presidential Decree No. 463, which revised Commonwealth Act No. 137, was in force in 1974, it likewise recognized the *regalian* doctrine embodied in the 1973 Constitution. It declared that all mineral deposits and public and private lands belonged to the state while, nonetheless, recognizing mineral rights that had already been existing under the Philippine Bill of 1902 as being beyond the purview of the *regalian* doctrine.<sup>[10]</sup> The possessory rights of mining claim holders under the Philippine Bill of 1902 remained intact and effective, and such rights were recognized as property rights that the holders could convey or pass by descent.<sup>[11]</sup>

In the instant cases, SEM does not aver or prove that its mining rights had been perfected and completed when the Philippine Bill of 1902 was still the operative law. Surely, it is impossible for SEM to successfully assert that it acquired mining rights over the disputed area in accordance with the same bill, since it was only in 1984 that MMC, SEM's predecessor-in-interest, filed its declaration of locations and its prospecting permit application in compliance with Presidential Decree No. 463. It was on 1 July 1985 and 10 March 1986 that a Prospecting Permit and EP 133, respectively, were issued to MMC. Considering these facts, there is no possibility that MMC or SEM could have acquired a perfected mining claim under the auspices of the Philippine Bill of 1902. Whatever mining rights MMC had that it invalidly transferred to SEM cannot, by any stretch of imagination, be considered "mining rights" as contemplated under the Philippine Bill of 1902 and immortalized in *McDaniel* and *Gold Creek Mining*.

SEM likens EP 133 with a building permit. SEM likewise equates its supposed rights attached to the exploration permit with the rights that a private property land owner has to said landholding. This analogy has no basis in law. As earlier discussed, under the 1935, 1973 and 1987 Constitutions, national wealth, such as mineral resources, are owned by the State and not by their discoverer. The discoverer or locator can only develop and utilize said minerals for his own benefit if he has complied with all the requirements set forth by applicable laws and if the State has conferred on him such right through permits, concessions or agreements. In other words, without the imprimatur of the State, any mining aspirant does not have any definitive right over the mineral land because, unlike a private landholding, mineral land is owned by the State, and the same cannot be alienated to any private person as explicitly stated in Section 2, Article XIV of the 1987 Constitution:

All lands of public domain, waters, **minerals x x x and all other natural resources are owned by the State**. With the exception of agricultural lands, all other **natural resources shall not be alienated**. (Emphases supplied.)

Further, a closer scrutiny of the deed of assignment in favor of SEM reveals that MMC assigned to the former the rights and interests it had in EP 133, thus: